

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ONLY COPY AVAILABLE

Docket No. 75-6079

75-  
6079

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY  
OF NEW YORK,

Plaintiffs-Appellees,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS'  
INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICE-  
SHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING  
CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants-Appellants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

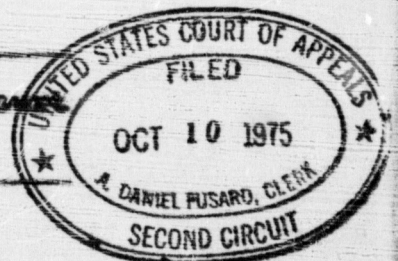
On Appeal From the United States District Court  
For the Southern District of New York

JOINT APPENDIX - Volume 1 of 4

PAUL J. CURRAN, ESQ.  
United States Attorney  
Attorney for Plaintiffs-  
Appellees  
Southern District of New York  
U. S. Courthouse - Foley Square  
New York, New York 10013  
791-1966

October 10, 1975

SOL BOGEN, ESQ.  
Attorney for Defendants-Appellants,  
Sheet Metal Workers International  
Association, Local Union No. 28  
and Union Trustees of Local 28,  
Joint Apprenticeship Committee  
One Pennsylvania Plaza  
New York, New York 10001  
736-7570



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PAGINATION AS IN ORIGINAL COPY



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DOCKET ENTRY

FILED

- |                                                                                                                                       |                    |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1. Complaint                                                                                                                          | June 29, 1971      |
| 2. Answer of Local 28                                                                                                                 | September 23, 1971 |
| 3. Third-Party Complaint, with exhibits                                                                                               | September 23, 1971 |
| 4. Answer, Sheet Metal & Air-Conditioning<br>Contractors National Association,<br>New York Chapter, Inc.<br>(Sheet Metal Contractors) | September 28, 1971 |
| 5. Answer, Sheet Metal Workers<br>(Local Union 28) Joint Apprenticeship<br>Committee & Trust<br>(Local 28 JAC)                        | October 1, 1971    |
| 6. Fourth-Party Complaint, with exhibits                                                                                              | October 1, 1971    |
| 7. Third-Party Answer                                                                                                                 | October 18, 1971   |
| 8. Fourth-Party Answer                                                                                                                | October 20, 1971   |
| 9. Notice of Motion to<br>Intervene by City of<br>New York, with exhibits                                                             | June 15, 1972      |
| 10. Order to Show Cause to Adjudge<br>Defendants in Contempt,<br>with affidavit of Taggart D. Adams<br>attached, with exhibits        | October 7, 1974    |
| 11. Plaintiffs' Memorandum of Law<br>In Support of their Motion<br>for an order adjudging<br>Defendants in Contempt                   | October 7, 1974    |
| 12. Pre-Trial Order                                                                                                                   | December 16, 1974  |
| 13. Transcript of Proceedings<br>dated December 16, 1974                                                                              | February 10, 1975  |



- |     |                                                                                                                                                  |                                                           |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| 14. | Post Trial Memorandum<br>of City of New York                                                                                                     | April 4, 1975                                             |
| 15. | Reply Memorandum on Behalf of<br>Plaintiff Equal Employment<br>Opportunity Commission                                                            | April 18, 1975                                            |
| 16. | Opinion #42823 (H.F.W.)                                                                                                                          | July 18, 1975                                             |
| 17. | Memorandum in Support of<br>Plaintiffs' motion to limit<br>issues for trial, with endorsement                                                    | July 21, 1975<br>Originally filed<br>January 7, 1975      |
| 18. | Transcript of Proceedings<br>Dated January 13, 14, 15, 16,<br>17, 20, 21, 22, 23, 24, 27,<br>28, 29, 30, February 3, 1975                        | July 31, 1975                                             |
| 19. | Amendment to Opinion #42823                                                                                                                      | August 7, 1975                                            |
| 20. | Order to Show Cause for Stay<br>Pending Appeal with Endorsed Order<br>Denying Stay, with Memorandum                                              | August 26, 1975                                           |
| 21. | Notice of Appeal by Sheet Metal Workers'<br>International Association, Local<br>Union No. 28, and the Local 28 Joint<br>Apprenticeship Committee | August 28, 1975                                           |
| 22. | Certified copy of Order and Judgment                                                                                                             | August 29, 1975                                           |
| 23. | Notice of Appeal by City of New York                                                                                                             | September 12, 1975                                        |
| 24. | Amended Notice of Appeal                                                                                                                         | September 12, 1975                                        |
| 25. | Notice of Cross Appeal by U.S.E.E.O.C.                                                                                                           | September 16, 1975                                        |
| 26. | Post Trial Memorandum of United States<br>E.E.O.C.                                                                                               | September 17, 1975,<br>Originally served<br>April 4, 1975 |
| 27. | Application and Order Amending Order<br>and Judgment entered 8/29/75                                                                             | September 17, 1975                                        |
| 28. | Stipulation pursuant to Rule 11(e), FRAP                                                                                                         |                                                           |
| 29. | Clerk's Certificate                                                                                                                              |                                                           |

UNITED STATES OF AMERICA,  
Plaintiff,

Jan 25 11 46 AM '71  
S.D.C.T.

-v-

LOCAL 638, ENTERPRISE ASSOCIATION  
OF STEAM, HOT WATER, HYDRAULIC  
SPRINKLER, PNEUMATIC TUBE, COMPRESSED  
AIR, ICE MACHINE, AIR CONDITIONING  
AND GENERAL PIPEFITTERS; THE JOINT  
STEAMFITTERS APPRENTICESHIP COMMITTEE  
OF THE STEAMFITTERS INDUSTRY; LOCAL 28,  
SHEET METAL INTERNATIONAL ASSOCIATION;  
SHEET METAL WORKERS LOCAL 28 JOINT  
APPRENTICESHIP COMMITTEE; LOCAL 580, IN-  
TERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL AND ORNAMENTAL IRON WORKERS;  
THE JOINT APPRENTICE-JOURNEYMEN EDUCATIONAL  
FUND OF THE ARCHITECTURAL ORNAMENTAL IRON WORKERS  
LOCAL 580; LOCAL 40, INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS;  
THE JOINT APPRENTICESHIP COMMITTEE, IRON WORKERS  
LOCAL 40 AND 361; MECHANICAL CONTRACTORS ASSOCIA-  
TION OF NEW YORK, INC.; SHEET METAL CONTRACTORS  
ASSOCIATION OF NEW YORK CITY, INC.; ALLIED BLDG.  
METAL INDUSTRIES.

71 CIV. 2877

COMPLAINT

71 Civ.

Defendants.

1. This action is brought by the Attorney General on behalf of the United States, seeking relief from violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., and from interference with the implementation of Presidential Executive Order 11246 forbidding racial discrimination in employment opportunities by government contractors.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1345 and 42 U.S.C. §2000e-6(b).

3. Local 638 Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air,



Ice Machine, Air Conditioning and General Pipefitters ("Local 638") is a member of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, with principal offices at 841 Broadway, New York, New York. It is an unincorporated association of approximately 7,500 members, 4,000 of whom are in the A or Construction Branch (the "A Branch") and 3,500 of whom are in the B or Metal Trades Branch (the "B Branch"). A Branch members earn significantly higher wages than B Branch members. Only 28 of the A Branch members are non-white while there are 500 non-whites in the B Branch.

4. Local 638 has a collective bargaining agreement with the Mechanical Contractors Association of New York, Inc. ("Mechanical Contractors"), an association of building contractors engaged in mechanical (such as plumbing and steamfitting) construction. Through this collective bargaining agreement, Local 638 exercises exclusive control over steamfitting work in the five boroughs of New York City and Nassau and Suffolk Counties. As a matter of practice, all individuals employed by members of the Mechanical Contractors as construction steamfitters must be Local 638 A Branch members or obtain approval to work from the A Branch of Local 638.

5. The Joint Steamfitters Apprenticeship Committee of the Steamfitters Industry ("Steamfitters JAC") is an unincorporated association with principal offices at 75 East 45th Street, New York, New York. It is composed of representatives of Local 638 and of the Mechanical Contractors. It



administers and controls the apprenticeship program for Local 638 and determines which persons shall be admitted to this apprenticeship program. At the present time, there are approximately 235 apprentices in the apprenticeship program of whom 15 are non-white.

6. Local 28, Sheetmetal International Association ("Local 28") is an unincorporated association with principal offices at 350 Broadway, New York, New York. It has approximately 3,500 members, only 44 of whom are non-white.

7. Local 28 has collective bargaining agreements with Sheetmetal Contractors Association of New York City, Inc., ("Sheetmetal Contractors"), an association of building contractors engaged in sheetmetal construction work, and with the Mechanical Contractors, which require all individuals employed by members of these associations as sheetmetal workers to become union members within 7 days of employment. Through these collective bargaining agreements, Local 28 exercises exclusive control over sheetmetal work in the five boroughs of New York City.

8. The Sheetmetal Workers Local 28 Joint Apprenticeship Committee (Local 28 JAC) is an unincorporated association composed of representatives of Local 28 and the Sheetmetal Contractors Association of New York City, Inc. The Local 28 JAC administers and controls the apprenticeship program for Local 28 and determines which persons shall be admitted to this apprenticeship program. At this time there are approximately 586 apprentices in the program, of whom 102 are nonwhite.

9. Local 580, Bridge, Structural and Ornamental Ironworkers (Local 580") is an unincorporated association

with principal offices at 265 West 14th Street, New York, New York. It has approximately 1,400 members, all but 2 of whom are white.

10. Local 580 has a collective bargaining agreement with Allied Building Metal Industries, ("Allied Metal") an association of contractors engaged in ironwork construction, and through this collective bargaining agreement exercises exclusive control over ornamental ironwork in the five boroughs of New York City, and Westchester, Nassau and Suffolk Counties. As a matter of practice, all individuals employed by members of Allied Metal as ornamental iron workers must be members of Local 580 or hold valid work permits issued by Local 580.

11. The Joint Apprentices-Journeyman Educational Fund of the Architectural Ornamental Ironworkers Local 580 of the International Bridge Structural and Ornamental Ironworkers ("Iron Workers JAC-580") is an unincorporated association with principal offices at 213 West 14th Street, New York, New York. It is comprised of representatives of Local 580 and Allied Metal. It administers and controls the apprenticeship program for Local 580 and determines which persons shall be admitted to the apprenticeship program. At the present time, there are 71 apprentices in the apprenticeship program, of whom 13 are non-white.

12. Local 40 of the International Association of Bridge, Structural and Ornamental Ironworkers ("Local 40") is an unincorporated association with principal offices at 673 Broadway, New York, New York. It has approximately 878 members, only 50 of whom are non-white.



13. Local 40 has a collective bargaining agreement with Allied Metal and through this collective bargaining agreement exercises exclusive control over structural iron work in Manhattan, Bronx, and Staten Island and in Westchester County. As a matter of practice, all individuals employed by members of Allied Metal as structural iron workers must be members of Local 40 or hold valid work permits issued by Local 40.

14. The Joint Apprenticeship Committee, Ironworkers Locals 40 and 361 ("JAC-40-361") is an unincorporated association with principal offices at Fourth Avenue, New York, New York. It is composed of representatives of Local 40, Allied Metal, and Local 361 of the International Association of Bridge, Structural and Ornamental Ironworkers, Brooklyn, New York. It administers and controls the apprenticeship program for Locals 40 and 361 and determines which persons shall be admitted to this apprenticeship program. At the present time, there are approximately 136 apprentices in the apprenticeship program, of whom 29 are non-white.

15. The defendant contractor associations, Mechanical Contractors, Sheetmetal Contractors and Allied Metal, each transact business in the Southern District of New York and are named as defendants in this action for purposes of relief only pursuant to Rule 19(a) (1) of the Federal Rules of Civil Procedure.

16. The union defendants are labor organizations within the meaning of 42 U.S.C. §2000e(d) and are engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e(e).

17. The joint apprenticeship defendants are joint labor-management committees controlling apprenticeship training within the meaning of 42 U.S.C. §2000e-2(d).

18. The union defendants are engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by 42 U.S.C. §2000e-2(c) and §2000e-2(d). This pattern or practice of resistance includes, but is not limited to, the following specific acts and practices:

- (a) Failing and refusing to admit nonwhite workmen into the defendant unions as journeymen members on the same basis as whites are admitted;
- (b) Failing and refusing to refer nonwhite workmen for employment within their respective jurisdictions on the same basis as whites are referred by applying standards for referral which have the purpose and effect of ensuring referral priority to their members and, in the case of Local 638, A Branch members, nearly all of whom are white, thereby perpetuating the effects of their past discrimination;
- (c) Failing and refusing to recruit blacks for membership in and employment through the defendant unions on the same basis as whites are recruited;
- (d) Failing and refusing to permit contractors with whom the defendant unions have collective bargaining agreements to fulfill the affirmative action obligations imposed upon those



contractors by Executive Order 11246 by refusing to refer out blacks whom such contractors wish to employ:

(e) Failing and refusing to take reasonable steps to make known to non-white workmen the opportunities for employment in the trades under their jurisdictions, or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and practices.

The pattern or practice of resistance described in this Paragraph is of such a nature and is intended to deny the full enjoyment by non-whites of rights secured to them by 42 U.S.C. 2000e et seq.

19. The defendant Steamfitters JAC is engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by 42 U.S.C. §2000e-2(c) and §2000e-2(d). This pattern and practice of resistance has included and includes, but is not limited to, the following specific acts and practices:

(a) Failing and refusing to make information concerning apprenticeship opportunities available to non-whites on the same basis as it is made available to whites;

(b) Failing and refusing to make apprenticeship opportunities available to non-whites on the same basis as they are made available to whites by giving a preference in the selection of apprentices to friends and relatives of union members, nearly all of whom are white;

(c) Adopting standards for the selection of apprentices which are not job related and which operate to disqualify a disproportionate number of non-white applicants for apprenticeship.

The pattern or practice of resistance described in this Paragraph is of such a nature and is intended to deny the full enjoyment by non-whites of rights secured to them by 42 U.S.C. 2000e et seq.

20. The Sheetmetal Local 28 JAC, the Ironworkers Local 580 JAC, and the Ironworkers Local 40-361 JAC are named as defendants in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.

21. The aforementioned acts and practices have together operated as a substantial impediment to the employment of non-whites in the building trades in New York City and have hindered and prevented contractors from fulfilling affirmative action programs formulated pursuant to Executive Order 11246, and to Regulations promulgated thereunder.

22. The defendants have failed and refused to take reasonable steps to eliminate the effects of their past discriminatory policies and practices. Unless enjoined by order of this Court, the defendants will continue to engage in patterns and practices which have the effect of denying employment opportunities to non-whites on account of their race.

WHEREFORE, the plaintiff prays that all defendants, their officers, agents, members, employees, successors, and



all persons and organizations in active concert or participation with them be preliminarily and permanently enjoined from engaging in any racially discriminatory employment, membership, or referral practice, or in any employment, membership, or referral practice which operates to continue the effects of past racially discriminatory employment, membership or referral practices, and further that they be preliminarily and permanently enjoined from:

- (1) Failing or refusing to admit non-whites into journeyman membership on the same basis as whites are, or have been so admitted;
- (2) Failing and refusing to establish work referral systems which eliminate the effects of past discrimination by providing non-white applicants for referral with employment opportunities equal to those afforded white applicants;
- (3) Failing and refusing to recruit non-white candidates for membership and work referral on the same basis as whites have been recruited in the past,
- (4) Failing or refusing to adopt standards and procedures for apprenticeship qualification which make opportunities for apprentice training available to non-white applicants on the same basis as those opportunities are available to white applicants;
- (5) Failing and refusing to refer non-white

applicants for work on the same basis as white applicants are referred;

(6) Failing and refusing to take reasonable steps to overcome the present and continuing effects of their past discriminatory policies and practices, including at least the following affirmative steps:

(a) implementation of a program designed to fully inform the minority community about the work and training opportunities available through the facilities of the defendant unions and joint apprenticeship committees;

(b) implementation of training programs, in addition to those now conducted for apprentices, designed to fully train and fully qualify non-white workmen who are either too old to qualify as apprentices or who are already partially qualified in their trade;

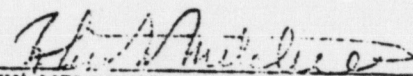
(c) selection of sufficient apprentices from among qualified non-white applicants to overcome the effects of past discrimination.

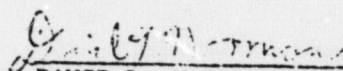


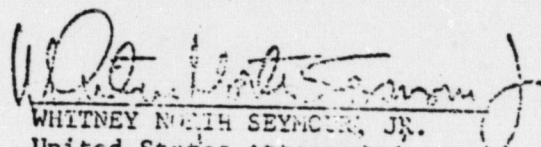
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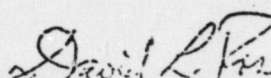
Plaintiff further prays for such other and additional relief as the cause of justice may require, together with its costs and disbursements in this action.

Respectfully submitted,

  
JOHN MITCHELL  
Attorney General

  
DAVID L. NORMAN  
Acting Assistant Attorney General

  
WHITNEY NORTH SEYMOUR, JR.  
United States Attorney

  
DAVID L. ROSE  
Attorney  
Department of Justice  
Washington, D. C. 20530

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	X	
Plaintiff,	:	
-against-	:	
LOCAL 638 ETC., ET AL.,	:	COMPLAINT
Defendants,	:	71 Civ. 2877
CITY OF NEW YORK,	:	(MIG)
Applicant for Intervention	:	
	X	

1. This action is brought by the City of New York as an intervener in a suit brought by the Attorney General on behalf of the United States, seeking relief from violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq., and from interference with the implementation of Presidential Executive Order 11245.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1345 and 42 U.S.C. §2000e-6 (b).

3. The City of New York is a municipal corporation subject to the requirements of Title VII of the Civil Rights Act of 1964 and of Presidential Executive Order 11246, as well as the mandate of Chapter I, Title B of the New York City Administrative Code.

4. The International Association of Sheet Metal Workers Local Union No. 28 (Local 28) is an unincorporated association with principal offices at 350 Broadway, New York, New York. It has approximately 3,500 members, only 44 of whom are non-white.

5. Local 28 has a collective bargaining agreement with Sheet Metal and Air Conditioning Contractors National Association, New York City Chapter, Inc., (Sheet Metal Contractors), an association of building contractors engaged in sheet metal construction work, which requires all individuals employed by members of this association as sheet metal workers to become union members within 7 days of employment. Through this



collective bargaining agreement, Local 28 exercises exclusive control over sheet metal work in the five boroughs of New York City.

6. The Sheet Metal Workers (Local Union No. 28) Joint Apprenticeship Committee (Local 28 JAC) is an unincorporated association composed of representatives of Local 28 and the Sheet Metal Contractors Association. The Local 28 JAC administers and controls the apprenticeship program for Local 28 and determines which persons shall be admitted to this apprenticeship program. At this time there are approximately 586 apprentices in the program, of whom 102 are non-white.

7. Local 28 is a labor organization within the meaning of 42 U.S.C. §2000e (d) and §81-2.0 (3) of the New York City Administrative Code and is engaged in an industry affecting commerce within the meaning of 42 U.S.C. §2000e (e).

8. Local 28 JAC is a joint labor-management committee controlling apprenticeship training within the meaning of 42 U.S.C. §2000e-2 (d) and §81-7.0 (1a) of the New York City Administrative Code.

9. The Sheet Metal and Air Conditioning Contractors National Association, New York City Chapter, Inc., transacts business in the Southern District of New York and is named as a defendant in this action for purposes of relief only pursuant to Rule 19 (a) of the Federal Rules of Civil Procedure.

10. Local 28 is engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by 42 U.S.C. §2000e-2 (c) and §2000e-2 (d) and by §81-7.0 of the New York City Administrative Code. This pattern and practice of resistance includes, but is not limited to, the following acts and practices:

- a. Failing and refusing to admit non-white workmen into the defendant union as journeymen members on the same basis as

- whites are admitted;
- b. Failing and refusing to refer non-white workmen for employment on the same basis as whites are referred by applying standards for referral which have the purpose and effect of ensuring referral priority to their members nearly all of whom are white, thereby perpetuating the effects of their past discrimination;
  - c. Failing and refusing to recruit Blacks for membership in and employment through the defendant union on the same basis as whites are recruited;
  - d. Failing and refusing to permit contractors with whom the defendant union has collective bargaining agreements to fulfill the affirmative action obligations imposed upon those contractors by Executive Order 11246 by refusing to refer out Blacks whom such contractors wish to employ;
  - e. Failing and refusing to take reasonable steps to make known to non-white workmen the opportunities for employment in the sheet metal trades, or otherwise to take affirmative action to overcome the efforts of past racially discriminatory policies and practices.
  - f. Adopting standards for admission to union membership which are not job related and which operate to disqualify a disproportionate number of non-whites for membership.

The pattern or practice of resistance described in this Paragraph is of such a nature and is intended to deny the full enjoyment by non-whites of rights secured to them by 42 U.S.C. 2000e et. seq., and by SB1-7.0 of the New York City Administrative Code.



11. The defendant Local 28 JAC is engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by 42 U.S.C. §2000e-2 (c) and §2000e-2 (d) and by §81-7.0 of the New York City Administrative Code. This pattern and practice of resistance has included and includes, but is not limited to, the following specific acts and practices:

- a. Failing and refusing to make information concerning apprenticeship opportunities available to non-whites on the same basis as it is made available to whites;
- b. Failing and refusing to make apprenticeship opportunities available to non-whites on the same basis as they are made available to whites;
- c. Adopting standards for the selection of apprentices which are not job related and which operate to disqualify a disproportionate number of non-white applicants for apprenticeship.

The pattern or practice of resistance described in this Paragraph is of such a nature and is intended to deny the full enjoyment by non-whites of rights secured to them by 42 U.S.C. §2000e et seq. and by §81-7.0 of the New York City Administrative Code.

12. The aforementioned acts and practices have together operated as a substantial impediment to the employment of non-whites in the building trades in New York City and have hindered and prevented contractors from fulfilling affirmative action programs formulated pursuant to Executive Order 11246, and to Regulations promulgated thereunder.

13. The defendants have failed and refused to take reasonable steps to eliminate the effects of their past discriminatory policies and practices. Unless enjoined by order of this Court,

the defendants will continue to engage in patterns and practices which have the effect of denying employment opportunities to non-whites on account of their race.

WHEREFORE, the plaintiff prays that all defendants, their officers, agents, members, employees, successors, and all persons and organizations in active concert or participation with them be preliminarily and permanently enjoined from engaging in any racially discriminatory employment, membership, or referral practice, or in any employment, membership, or referral practice which operates to continue the effects of past racially discriminatory employment, membership or referral practices, and further that they be preliminarily and permanently enjoined from:

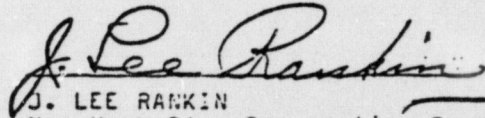
1. Failing or refusing to admit non-whites into journeyman membership on the same basis as whites are, or have been so admitted;
2. Failing and refusing to establish work referral systems which eliminate the effects of past discrimination by providing non-white applicants for referral with employment opportunities equal to those afforded white applicants;
3. Failing and refusing to recruit non-white candidates for membership and work referral on the same basis as whites have been recruited in the past;
4. Failing or refusing to adopt standards and procedures for apprenticeship qualification which make opportunities for apprentice training available to non-white applicants on the same basis as those opportunities are available to white applicants;
5. Failing and refusing to refer non-white applicants for work on the same basis as white applicants are referred;



6. Failing and refusing to take reasonable steps to overcome the present and continuing effects of their past discriminatory policies and practices, including at least the following affirmative steps:
  - a. implementation of a program designed to fully inform the minority community about the work and training opportunities available through the facilities of the defendant union and joint apprenticeship committees;
  - b. implementation of training programs, in addition to those now conducted for apprentices, designed to fully train and fully qualify non-white workmen who are either too old to qualify as apprentices or who are already partially qualified in their trade;
  - c. selection of sufficient apprentices from among qualified non-white applicants to overcome the effects of past discrimination.
  - d. adoption of selection criteria for entrance into training and apprenticeship programs and for admission to union membership which are related to successful performance of sheet metal work and do not operate to disqualify disproportionate numbers of non-white applicants.

Plaintiff further prays for such other and additional relief as the cause of justice may require, together with its costs and disbursements in this action.

Respectfully submitted,

  
J. LEE RANKIN

New York City Corporation Counsel

Dated: June 2, 1972

LC:cb

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION, and the  
CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 . . . LOCAL 28, of the  
SHEETMETAL WORKERS'  
INTERNATIONAL ASSOCIATION  
LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE . . . SHEETMETAL  
CONTRACTORS ASSOCIATION OF  
NEW YORK CITY, INC., etc.,

Defendants.

ORDER TO  
SHOW CAUSE TO  
ADJUDGE DEFENDANTS  
IN CONTEMPT  
71 Civ. 2877 (HEW)

Upon the motion of the plaintiffs, United States  
Equal Employment Opportunity Commission, by its attorney  
Paul J. Curran, United States Attorney for the Southern  
District of New York and the City of New York, by its  
attorney Adrian Burke, Corporation Counsel of the City of  
New York, and the annexed affidavits, it is hereby

ORDERED that the defendants Local 28 of the  
Sheetmetal Workers' International Association, Local 28  
Joint Apprenticeship Committee, and the Sheetmetal  
Contractors Association of New York, Inc., show cause,  
if there be any, before this Court in Room 118, United  
States Courthouse, Foley Square, New York, New York 10007  
at 2 o'clock on October 8<sup>th</sup>, 1974 or as soon there-  
after as counsel can be heard why an order pursuant to  
Civil Rule 14 of this Court should not be entered adjudging



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION, and the  
CITY OF NEW YORK,

Petitioners,

--against--

LOCAL 638 . . . LOCAL 28 of the  
SHEETMETAL WORKERS'  
INTERNATIONAL ASSOCIATION,  
COMMITTEE . . . SHEETMETAL  
CONTRACTORS ASSOCIATION OF  
NEW YORK CITY, INC., etc.,

Respondents.

AFFIDAVIT

71 Civ. 2877 (RWS)

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

TAGGART D. ADAMS, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney  
for the Southern District of New York, attorney for the  
plaintiff, Equal Employment Opportunity Commission  
("EEOC"), and as such, I am in charge of the prosecution  
of this case, and am familiar with the facts set forth  
herein.

2. I make this affidavit in support of  
plaintiffs motion for an order adjudging the defendants  
Local 28 of the Sheetmetal Worker's International Associa-  
tion, ("Local 28"), Local 28 Joint Apprenticeship

Committee ("JAC") and Sheetmetal Contractors Association of New York City, Inc., ("Contractors Association") in contempt of court for failing to comply with the terms of an Order of this Court (Gurfein, J.) dated July 2, 1974 which required JAC to admit on or before September 30, 1974 a total of eighty (80) individuals, including forty (40) minority individuals, to the apprenticeship program operated and controlled by the defendants.

Background and Prior Orders

3. This action was commenced on June 29, 1971 when the complaint herein was filed by the Attorney General of the United States on behalf of the United States\* charging Local 28, JAC and the Contractors Association, among others, with a pattern and practice of discrimination against admission of minority individuals\*\* to the union and its apprenticeship program.

4. In preparation for the trial of this action and for the purpose of potential settlement, a series of conferences were held before Judge Gurfein of this Court. Immediately following one of those conferences, the Court entered, without opposition from the parties, an interim Order dated April 9, 1974 directing, inter alia, that JAC admit on or before June 20, 1974 six (6) minority individuals to advanced standing in the apprenticeship program.

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\* Subsequent to the commencement of this action, EEOC was substituted for the United States as plaintiff herein.

\*\* "Minority" for purposes of this litigation includes black and Spanish-surname individuals.



5. At the time that the terms of the April 9, Order were being negotiated before Judge Gurfein, the parties herein were negotiating the terms of a further order which would direct the indenture of a new class of an additional seventy-four (74) apprentices in July, 1974. These negotiations led to the Order of this Court (Gurfein, J.) dated July 2, 1974 which was also entered without opposition. The Order, a copy of which is annexed hereto as Exhibit A, directed that:

- (a) JAC indenture and assign to work a new apprenticeship class of sixty (60) individuals, of whom forty (40) would be minority individuals, by September 30, 1974;
- (b) JAC process the applications for advanced standing in the apprenticeship program of twenty (20) minority individuals, including the six (6) individuals required under the April 9 interim Order, referred to JAC by the City of New York;
- (c) The Contractors Association and JAC were to assign these new apprentices

- to work and use their best efforts to provide continuous employment for journeymen and apprentices; and
- (d) This action be set for trial in September 1974.

JAC's Non-Compliance

6. On September 30, 1974, a conference was held among all counsel in this action to review defendants' compliance with the July 2 Order of this Court. (See the letter dated September 25, 1974 to counsel for Local 28, JAC and the Contractors Association which is annexed hereto as Exhibit B.). At this meeting, counsel for the defendants presented an oral report which made it abundantly clear that the defendants had failed to comply with terms of that Order. Counsel for the defendants reported that:

- (a) As of September 30, 1974 the application of only thirty-four (34) of the required sixty (60) individuals had been "processed" for acceptance into the apprenticeship program, and of this group, only eight were minority individuals. The applications of the remaining twenty-six (26)



individuals had not yet been processed, and as stated by counsel for the respondents, none of the sixty (60) individuals required to be admitted under the July 2 Order had been indentured and assigned for employment.

(b) As of September 30, 1974, twenty (20) minority individuals had been admitted to advanced standing in the apprenticeship program, but only eighteen (18) were presently working. Moreover, the total of twenty (20) was achieved only on September 30, 1974, whereas the Order of this Court required that these individuals be indentured during the period of July 8 through July 12.

7. On October 2, 1974 your deponent received a letter (a copy of which is annexed hereto as Exhibit C) from William Rothberg co-counsel for the JAC and counsel to the Contractors Association confirming the oral representations made on September 30, 1974.

8. The defendants have not complied with the Order of July 2, 1974. Not one of the 60 individuals required to be admitted by September 30, have been indentured or assigned to work, and the preliminary administrative processing has been completed only with respect to 34\* of the required 60. Likewise, not all of the 20 minorities admitted to advanced standing in the apprenticeship program are presently working, and the last 3 individuals of the 20 were admitted only on September 30, well beyond the date of July 12 set forth in the Order.

9. At the meeting held on September 30, counsel for the defendants asserted that their inability to fully comply with the terms of this Order was due to unavoidable administrative and logistical problems. Such assertions are clearly insufficient justification for failure to comply with the Order. The defendants were well aware of the proposed terms and timing of this Order as long ago as April of this year. Indeed, the schedule setting the period July through September 30 for compliance with the terms of this Order was agreed to by the parties specifically in order to deal realistically with such administrative problems that might arise. At no time subsequent to the entry of this Order and prior to September 30 did counsel for the

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\* According to the oral representations of counsel on September 30, of the 34 who have been processed, 26 are white and 8 are minority, thereby not conforming with the 2 white-to-1 minority ratio contemplated by July 2 Order.



defendants contact this office regarding any problems in administering the terms of the Order. Likewise, upon information and belief, they did not apply to this Court for any relief from the terms of this Order. To the contrary, defendants have simply presented a state of facts showing a clear violation of the Order and offered a time schedule of their own choosing for compliance.

10. Defendants' response to their own failure to comply with the Court's order is not acceptable to the plaintiffs. To acquiesce in the proposals contained in the letter of William Rothberg (Exhibit C) would be to condone a direct violation of the Court's order. Plaintiff has neither the power nor the inclination to take such a position.

11. Apprentice classes for the term of July-December 1974 began in the first two weeks of September. The sixty persons to be appointed apprentices under the Order will even now have to make up classes in order to graduate to the next term. In addition they have lost and continue to lose wages from the employment to which they would be assigned. As first term apprentices they would receive wages equalling 40% of the union wage scale.

12. Under rules of the JAC and Local 23 successful completion of a four year apprentice program entitles an apprentice to become a journeyman in Local 23. Time lost at the outset in being admitted to the program inevitably delays the accomplishment of this goal. All

of the 60 applicants ordered to be admitted by September 30 took the apprentice aptitude examination as long ago as either March 1973 or October 1971. On information and belief many have guided their future plans on the expectation of admission to apprenticeship program and the defendants should not be permitted to continue to wrongfully deny these individuals admission.

13. No previous application for the relief sought herein has been made in this action.

WHEREFORE, plaintiff respectfully requests an Order:

- (a) Adjudging defendants in contempt of the Order of this Court dated July 2, 1974;
- (b) Requiring the defendants to comply in all respects with the terms of the July 2 Order immediately;
- (c) Imposing a fine on the defendants jointly and severally equal to the total amount of wages which should have been paid to the eighty individuals required to be admitted to the apprenticeship program and assigned to work on the dates set forth in the July 2 Order, such fine to be payable



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Page 9

UNITED STATES  
SOUTHERN DISTRICT

to the apprentice applicants

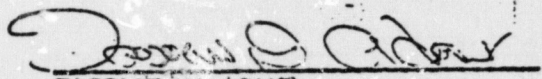
on a pro-rata basis as back pay.

UNITED STATES  
OPPORTUNITY CO.  
OF NEW YORK,

(d) Other and further relief as is  
just and proper.

-against-

LOCAL 638, etc.,  
LOCAL 28, etc.,

  
TAGGART D. ADAMS  
Assistant United States Attorney

endants.

Sworn to before me

this 4 day of

October, 1974, 1974 directing, among other things,

the new class (5) minority applicants

Approved: WALTER G. BRANNON, Notary Public, State of New York  
No. 24-0371806  
Qualified in Kings County, New York  
Cert. filed in New York County  
Term Expires March 30, 1975

METAL for a period of to and including June 1, 1974, and due  
delivered being even farther had, without  
opposition further

at concerning with the act of entry  
this October 10, 1974. The said indenture

and assistant a new class (50) ap-  
tices, and (40) white (20) county (20)

notes. The whites selected from

the 15 had been in the October, 1974

apprenticeship had received their physical

as, but were not receiving incentive

general strike and retention

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, EMPLOYMENT  
OPPORTUNITY COMMISSION AND CITY  
OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638, etc.,  
LOCAL 28, etc., et al.,

Defendants.

71 Civ. 2877  
(MIG)

ORDER

The Court, having made and entered an interim Order on the 9th day of April, 1974 directing, among other things, the admission of six (6) minority applicants to the Apprenticeship Program administered by the defendant SHEET METAL WORKERS, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE ("JAC") for a pilot period to and including June 30, 1974, and due deliberation having been further had thereon, now, without opposition, it is further

ORDERED, that commencing with the date of entry of this Order through September 30, 1974, JAC shall indenture and assign for employment a new class of sixty (60) apprentices, composed of forty (40) Whites and twenty (20) Non-Whites. The forty (40) Whites shall be selected from (i) the 15 applicants who had taken the October, 1971 apprenticeship examination, received their physical examinations, but were prevented from being indentured because of the general strike in the sheet metal industry during the Summer of 1972; and (ii) those applicants, in order of ranking, who attained the highest scores in the apprenticeship examination of March, 1973. The 20 Non-Whites shall be

Exhibit A



selected in order of ranking, from those who attained the highest scores in the apprenticeship examination of March, 1973, and it is further

ORDERED that during the period July 8th through July 12th, 1974, JAC shall (i) process the application for advanced placement in its apprenticeship program, pursuant to the terms and conditions of the various proposed Consent Decrees which are currently being negotiated in this action, of such qualified Non-Whites as the City may refer up to a total of 20, including the six (6) advanced apprentices employed in accordance with the Order of April 9, 1974 in this action, (ii) admit such persons, who are eligible under subdivision (i), under the same terms, conditions and provisions as are applicable to other apprentices heretofore indentured by JAC and (iii) assign such qualified persons for employment in the Apprenticeship Program with sheet metal contractors at job sites where the City and/or Board of Education would have otherwise required trainees to be employed, and it is further

ORDERED, that the Employers' Association and JAC shall use their best efforts to provide continuous employment for journeymen and apprentice sheet metal workers, and it is further

ORDERED, that this action be and it hereby is set down for trial in September, 1974 on such date as may be fixed by the Court, and it is further

ORDERED, that all of the foregoing shall be entirely  
without prejudice to the rights of any of the parties in  
the continuation of this action.

DATED: NEW YORK, NEW YORK  
July 2, 1974

s/ Murray T. Curbin  
U.S.D.J.



TDA:cb  
70-1674

September 25, 1974

Sol Bogen, Esq.  
One Penn Plaza  
New York, New York 10001

Rosenthal & Goldhaber  
44 Court Street  
Brooklyn, New York

Re: EEOC v. Local 638, etc. ...  
Local 23, etc. ... et al.  
71 Civ. 1377

Dear Sirs:

The undersigned was notified today by the Corporation Counsel's office that a meeting on Monday September 30 had been requested among counsel to the parties in this case for the purpose of discussing the compliance of the defendants with the order of Judge Gurleim entered July 2, 1974. This office is amenable to such a conference.

In this regard, however, we presently have information that the mandates of Judge Gurleim's order have not been complied with. Under those circumstances we have no alternative than to move before the Court for appropriate remedies. We do not intend to move until, of course, all counsel have had an opportunity to set forth the facts on Monday, September 30. Therefore we request that counsel for the defendants have a statement in writing prepared by the appropriate officials setting out the present status of compliance. Such a statement should include the exact status of the eighty persons ordered to be admitted to the apprenticeship program.

Exhibit B

Sol Degen, Esq.  
Rosenthal & Goldhaber

Page 2

On August 8, this office requested that the responses to Plaintiff's interrogatories be updated and supplemented as necessary. We were advised by a telephone call from S. Degen that these responses would be forthcoming by August 31. We have not yet received these responses and since they are necessary for the preparation of materials requested by Judge Werker on October 18, we request that they be forwarded immediately.

Very truly yours,

PAUL J. CURRAN  
United States Attorney

By: \_\_\_\_\_  
THOMAS D. HARRIS  
Assistant United States Attorney

cc: Adrian Burke  
Corporation Counsel  
Municipal Building  
New York, New York

Attn: Beverly Gross

Louis Leffkowitz  
Attorney General  
New York State  
2 World Trade Center  
New York, New York 10047

Attn: Dominick Tummaro

Hon. Henry F. Werker  
United States District Judge  
United States District Court  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007



ROSENTHAL & GOLDHABER  
*Counselors at Law*

BENJAMIN ROSENTHAL (1905-1966)  
MAX H. GOLDHABER  
RICHARD F. GOLDHABER  
WILLIAM ROTHBERG  
ARTHUR M. GABOR

*Mr. Adams*  
U.S. ATTORNEY  
7-10-74  
104 OCT-2 11:10  
S. D. N. Y.

44 COURT STREET  
BROOKLYN, N. Y. 11201  
(212) 237-9559

September 30, 1974

Adrian Burke  
Corporation Counsel of  
the City of New York  
Municipal Building  
New York, NY

Attention: Beverly Gross

Louis Lefkowitz  
Attorney General  
New York State  
2 World Trade Center  
New York, NY 10047

Attention: Dominick Tuminaro

Paul J. Curran  
United States Attorney  
U. S. Court House  
Foley Square  
New York, NY

Attention: Taggart D. Adams

Gentlemen:

As Co-Counsel to the Sheet Metal Workers' Local Union No. 28 Joint Apprenticeship Committee, I write to set forth the current status of the order of Judge Murray I. Gurfein dated July 2, 1974.

The Joint Apprenticeship Committee has indentured and assigned for employment twenty (20) advanced apprentices. Annexed hereto is a list of names of those who have been indentured as advanced apprentices. These apprentices are being handled under the same terms, conditions, and

OCT 2 - 1974

UNITED STATES ATTORNEY  
SO. DIST. OF N. Y.

Exhibit C

9/30/74

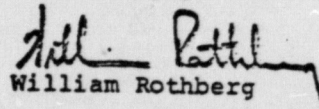
provisions as are applicable to all other apprentices heretofore indentured by the Joint Apprenticeship Committee. I further wish to advise that these advanced apprentices will receive all the requisite schooling for the Fall 1974 Term as any other apprentice in their class.

The Joint Apprenticeship Committee further wishes to advise that it has processed thirty-four (34) applicants for the July 1, 1974 class of apprentices. These applicants will be indentured and assigned for employment no later than October 15, 1974. The remaining twenty-six (26) applicants for the aforementioned class will be processed no later than October 15, 1974 and will be indentured and assigned for employment no later than October 31, 1974.

The aforementioned apprentices will receive all the schooling normally given to a first-term class of apprentices and will not be deprived of any rights because of their appointment subsequent to the commencing of classes.

I trust this meets with our understandings as discussed on September 30, 1974.

Very truly yours,

  
William Rothberg

WR/bk  
Enc.



9/30/74

ADVANCED APPRENTICES INDENTURED IN THE APPRENTICE PROGRAM

<u>NAME</u>	<u>TERM</u>	<u>EMPLOYER</u>
Bill Duncan	2	Federal
Bernard Wyatt	3	Federal
Abdul Muhammad	2	Alpine
Heron Francois	2	Alpine
Sandy Lam	3	National
Salvador Correa	2	Viking
Yu Lam	5	National
Bernard Cruz	3	National
Anthony Campbell	3	Viking
Sammie Shivers	3	Triangle
Curtis VanHook	3	Royal
Ronald Roberts	1	General
Lawrence Dickerson	5	General
Donald Jackson	5	General
Thomas Grant	5	General
James Holland	1	Viking
Joseph Cheatham	1	Federal
Horace Hall	2	National
Rudolfo Cabodevilla	4	National
John Hill	3	Alpine

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION and  
THE CITY OF NEW YORK,

Plaintiffs, : 71 Civ. 2877

-against-

: AFFIDAVIT

LOCAL 638, etc.,  
LOCAL 28, etc., et al.,

Defendants.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

BEVERLY GROSS, being duly sworn, deposes and  
says:

1. I am an Assistant Corporation Counsel associated  
with ADRIAN P. BURKE, Corporation Counsel of the City of  
New York, and am familiar with the facts of this case.

2. In September, 1971 the City was granted per-  
mission to intervene in the referenced action which charges  
the defendants with discrimination against non-whites in  
violation of Title VII of the Civil Rights Act of 1964.  
In consideration of such intervention the City withdrew an  
administrative proceeding against defendants previously  
commenced by the City Commission on Human Rights which  
alleged violations of the anti-discrimination provisions  
contained in § B1-7.0 of the New York City Administrative  
Code. The City commenced participation in discovery pro-  
ceedings which extended through the Spring of 1973. Simul-  
taneously, the parties were engaged in continuous negotia-  
tions for the purpose of devising a proposed consent decree



in settlement of the case.

3. One aspect of the settlement talks concerned a program for the training and employment of non-white sheet metal workers who could not presently qualify as sheet metal journeymen and who could not meet the standards for admission to the regular sheet metal apprentice programs.

4. Since 1970, the City has required that every contractor on a City job employ 1 minority "trainee" for every 4 journeymen working in each building trade on its City contract. The Board of Education has a similar provision in its construction contracts. The New York Plan for Training, which also provides for the training and employment of minority "trainees", is applicable to federal and New York State construction projects in the City.

5. These contract conditions are applicable to all construction trades. Local 28 is the only local in the City which refused to participate voluntarily in the New York Plan and, accordingly, sheet metal contractors are required to meet the more stringent minority hiring standards of the United States Department of Labor.

6. Notwithstanding the contractual obligations of sheet metal contractors to employ "trainees", and despite the professed willingness of Local 28 in settlement talks to include a program for trainees in the proposed consent decree, in March 1974 Local 28 members refused to work with minority trainees at several City and Board of Education job-sites. Sheet metal work was sheet down at those sites as a result of community group demonstrations and Local 28 walk-offs.

7. On March 18 and March 20, 1974 Local 28 filed charges with the NLRB against the Sheet Metal Contractors Association and two sheet metal employers for hiring these trainees.

8. Also on March 20, 1974, officials of Local 28 and counsel for the union and the Sheet Metal Contractors Association met with James McNamara, Director of the City's Office of Contract Compliance and Richard Smith, Director of the Board of Education's Office of Equal Opportunity to discuss the assignment of trainees to construction sites. Also present at the meeting were several sheet metal contractors and several representatives of the community groups which had demonstrated at these sites to demand the employment of more minority sheet metal workers. The union proposed that no trainees be assigned to sheet metal contractors until a consent decree had been entered in the case. The public officials proposed that if trainees were permitted to work at the closed Board of Education sites they would agree to temporarily delay the further assignment of trainees. On information and belief, the Executive Board of Local 28 met on March 25, 1974 and determined to continue the union's opposition to any assignment of trainees to sheet metal jobs thereby deliberately preventing the contractors from complying with their affirmative action contract conditions.

9. On March 28, 1974 counsel for Local 28 wrote to Judge Gurfein requesting that the City and the Board of Education be enjoined from continuing to assign trainees to sheet metal contractors until the trial or settlement of the case. On April 3, 1974 the Sheet Metal Contractors Association applied to Judge Gurfein for an Order to Show Cause en-



joining Local 28 from interfering with the performance of work by sheet metal contractors on City and Board of Education job sites. Counsel for all the parties were called to a conference with Judge Gurfein on that date and, at his direction, met on April 5 and April 8 to work out an interim settlement.

10. After deliberate consideration all parties agreed that the 6 trainees assigned to the sites still closed would be sent back to work and that Local 28 workers would resume the jobs. It was further agreed that the City and the Board of Education would not assign further trainees to sheet metal contractors through June 30th. These provisions were incorporated in an Order signed by Judge Gurfein on April 9, 1974 (Exhibit A).

11. The City agreed to use its best efforts to prevail upon community groups to refrain from demonstrations at sheet metal sites during this period.

12. It was further agreed to by all parties that a new class of 80 apprentices would be indentured during the summer, one-half white and one-half minority, including the 6 trainees referred to in the April 9th Order, and that this agreement would be embodied in a proposed Order to be submitted to the Court on July 2nd. Such an Order was submitted and was signed by Judge Gurfein on July 2, 1974 "without opposition" of any party. (Exhibit B)

13. The April 9th Order was complied with; the 6 trainees were employed and the jobs resumed without further incident. No additional trainees were assigned to sheet metal contractors.

14. In accordance with the July 2nd Order, the City referred minority applicants to the Joint Apprenticeship Committee (JAC) for placement as advanced apprentices. As is more fully set out in the affidavit of Bernard Woods, plaintiffs' efforts to expedite compliance with the Order were unavailing and the processing and employment of the remaining 14 advanced apprentices (trainees) was continuously delayed even though the JAC had the power to comply with this provision of the Order and ample opportunity to exercise it. Further, it being apparent that the JAC would not, without an intensive effort, indenture a new class of 60 apprentices by the September 30 date fixed in the Order, I sent a letter to JAC co-counsel on September 9th advising of the seriousness of such failure. (Exhibit C). Mr. Rothberg, also counsel for the Contractors' Association, responded to my letter with a phone call, informing me of the efforts being undertaken by the Contractors' Association and its JAC members to comply with the Order. He advised me that the JAC was meeting on September 25th, at which time further action would be determined with reference to the Order. Mr. Bogen, also counsel for the union, did not respond to my letter.

15. The City served a notice of deposition on Local 28 by its president Edward Stack and Edward Stack individually was noticed and served with a subpoena returnable at 10:00 A.M. on September 30. A few days before the return date of the deposition I called Mr. Bogen. He advised me that efforts were being made to comply with the trainee requirements of the Order and suggested that, if such efforts were fruitful and if the imminent meeting of the JAC resulted in full compliance with the Order, the deposition



might be unnecessary.

16. On September 25 I spoke with Messrs. Rothberg and Bogen, who requested that the desposition be adjourned in favor of a meeting of counsel for purposes of a progress report on the status of compliance with the July 2nd Order. Assistant United States Attorney Adams conditioned his assent on the production of a written report regarding compliance. The meeting was held on September 30. A written report was not forthcoming. It was conceded by Messrs. Rothberg and Bogen that JAC had not complied with the Order fully although through recent efforts 34 of the 60 new apprentices had been processed. None of these, however, were working or attending apprenticeship classes. In addition, the full complement of 20 trainees, which was to have been assigned for employment by July 12, had only that morning been completed, fully 2 1/2 months beyond the date agreed to and ordered by the Court. They pointed out some of the practical difficulties encountered and represented that full compliance would be accomplished by the end of October.

17. At no time from the issuance of the Order has the Joint Apprenticeship Committee or its counsel contacted plaintiffs' counsel to discuss any problems regarding effectuation of the Order or, on information and belief, applied to the Court for a modification thereof. The JAC agreed on April 9th that in July they would accept 20 trainees and that by September 30 they would indenture an additional 60 new apprentices. Yet, on information and belief, no efforts were made to establish the procedures that would enable them to accomplish this or to anticipate the not unexpected, and certainly not insurmountable, administrative and practical

difficulties they encountered when they belatedly turned their attention to their mandated task.

18. According to the deposition of Robert Schluter, Coordinator of the JAC, taken on December 15, 1972, it is the customary practice that those who are eligible for indenture as apprentices for a July class are notified by JAC in April or May to come in for processing. Mr. Schluter further testified that the physical examination and interview of each apprentice eligible requires 1 1/4 hours. Accordingly, there was more than adequate time in which to complete the processing of the 60 new apprentices by September 30 without special effort even if the JAC did not commence the processing until the April 9th agreement became an Order of the Court on July 2nd. In fact, at the September 30th meeting, referred to above, Mr. Rothberg stated that the JAC did not attempt to locate eligible candidates for the new class of 60 apprentices until the beginning of August, a full four months after the JAC had agreed to indenture and assign for employment such a class.

19. On information and belief it was only upon service of the notice of deposition and subpoena upon Edward Stack that the JAC decided to accept the mandate of the Court; until that time the JAC was prepared not only to engage in further dilatory tactics but also to resist to clear mandate of the Court to assign such 60 new apprentices for employment. This belief is supported by the fact that after almost 3 years of negotiations in the main case, settlement talks collapsed when new union officers were elected in July, 1974. This newly elected leadership of Local 28 appointed its representatives to the JAC at the end



of July, 1974, the time when implementation of the Order should have been receiving priority attention. Not only was this attention not given, but my letter of September 9 went unanswered and the first contact initiated by counsel for the Local 28 representatives on the JAC was his request, passed on to me by Mr. Rothberg on September 25, for a meeting in lieu of the deposition.

20. It is only recently that the JAC has represented to plaintiffs certain purported difficulties in implementing the July 2nd Order, even though the JAC knew in April of 1974 that such Order would be forthcoming and then consented to its provisions. It is submitted that said current difficulties, if any, were the self-imposed result of a deliberately calculated scheme of procrastination. This is evidenced, inter alia, by the fact that the JAC did not indicate, until September 30, that it would not be able to comply with the provisions of the Order by the dates recited therein. This is further evidenced by statements made at the deposition of Edward Stack on October 2, 1974 to the effect that the JAC was not prepared to obey the July 2nd Order unless Local 28 succeeded in obtaining employment for all its unemployed upper term apprentices.

21. As a result of such purposeful action as described above the minority workers intended to benefit from the July 2nd Order have suffered monetary damages in the amount of the wages they would have earned if they had been timely assigned to work.

22. For the reasons recited herein, the plaintiff City of New York prays for Judgment against the JAC holding said defendant in civil contempt and for an Order mandating

immediate compliance with the lawful and binding decree of the Court dated July 2, 1974 in this action.

23. Further, plaintiff City of New York requests the imposition of a per diem fine on the JAC to coerce its compliance with the July 2nd Order.

24. In addition, plaintiff City of New York requests the imposition of compensatory fines for those minority workers unlawfully denied their timely assignment to work pursuant to the July 2, 1974 decree and for such other and further relief as to the Court may seem appropriate.

25. The City of New York will produce at any hearing held subsequent hereto such proof as to the measure of damages as to the Court may be deemed necessary or convenient.

WHEREFORE, I request that the relief herein sought by the plaintiff City of New York be granted in all respects.

Dated: New York, New York

October 3, 1974

*Beverly Gross*  
BEVERLY GROSS

Sworn to before me this

3<sup>RD</sup> day of October, 1974.

*Ralph L. Lee*

RALPH L. LEE  
Notary Public, State of New York  
No. 41-229588 Queens County  
Term Expires March 30, 1975



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA AND  
CITY OF NEW YORK,

Plaintiffs,

v.

LOCAL 638, etc., . . .  
LOCAL 28, etc., et al.,

Defendants.

ORDER

72 Civ. 2877  
(MIG)

-----x  
Defendant Sheet Metal Workers' International Association, Local Union No. 28, ("Local 28") having requested the Court on March 28, 1974 to issue an Order enjoining and restraining the Plaintiff City of New York ("City") and the Board of Education of the City of New York ("Board"), from assigning and referring persons for employment as "trainees" to sheet metal contractors in signed agreement with Local 28 on construction jobs throughout the City of New York, and the Defendant Sheet Metal and Air Conditioning Contractors National Association, New York City Chapter, Inc. ("Contractors Association") having sought to commence an action on April 3, 1974, against Local 28 entitled "Sheet Metal and Air Conditioning Contractors Natl. Ass'n, N.Y.C. Chapter, Inc. v. Sheet Metal Workers Intl. Ass'n Local No. 28 and its President, Dan Pasquinucci", 74 Civ. 1510, and contemporaneously therewith having made application to the Court for an Order to Show Cause enjoining and restraining Local 28 from engaging in any strike, work stoppage, slowdown or

interference with the performance of work by sheet metal contractors on City and Board job sites, including Boys High - Brooklyn, Fashion Institute of Technology - Manhattan, Family Court - Manhattan, and Ruppert Houses - Manhattan, pending arbitration of the dispute between the Contractors Association and Local 28 regarding the employment of <sup>manually</sup> "trainees", and the matter having come on to be heard before the Court on April 3, 1974, and the respective attorneys for the parties hereto and for the Board having appeared and having been heard, and due deliberation having been had thereon, it is, without opposition, and the Board consenting thereto,

ORDERED, that the Defendant Sheet Metal Workers Local 28 Joint Apprenticeship Committee ("JAC") be, and it is hereby, directed (i) to process the applications of the six persons heretofore referred by the City and the Board for employment with the sheet metal contractors on the Boys High, Fashion Institute of Technology, Family Court and Ruppert Houses job sites, for advanced placement in its apprenticeship program pursuant to the terms and conditions of the proposed Consent Decree which is currently being negotiated in this action, (ii) to admit such persons, who qualify under subdivision (i), for the period effective immediately to and including June 30, 1974 ("pilot period") under the same terms, conditions and provisions as are applicable to other apprentices heretofore indentured by JAC, and (iii) to assign such qualified persons for employment with the respective sheet metal contractors on the job sites hereinabove mentioned, and it is further,.



ORDERED, that Local 28 be and hereby is enjoined and restrained from causing any strike, work stoppage or slowdown during the pilot period on the four job sites referred to in the preceding paragraph, and it is further,

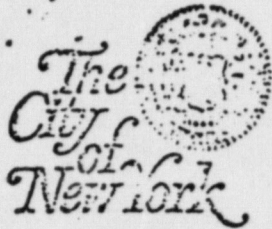
ORDERED, that the City and the Board be, and they each hereby are, restrained and enjoined from assigning and referring any person for employment as a trainee, or otherwise, to any sheet metal contractor in signed agreement with Local 28 for the pilot period, and it is further,

ORDERED, that the employment of the aforementioned apprentices shall be in addition to and not in place of currently employed journeymen on the aforesaid job sites, and it is further,

ORDERED, that all of the foregoing shall be entirely without prejudice to the rights of any of the parties in the continuation of this action.

Dated: New York, New York  
April 17, 1974

s/ Murray I. Gursky  
U.S.D.J.



LAW DEPARTMENT  
MUNICIPAL BUILDING  
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, Corporation Counsel

September 9, 1974

Cohen, Glickstein, Lurie, Ostrin,  
and Lubell, Esquires  
1370 Avenue of the Americas  
New York, New York 10009

Rosenthal & Goldhaber, Esquires.  
44 Court Street  
Brooklyn, N.Y.

Attention: Mr. Sol Bogen

Attn: William Rothberg, Esquire

Dear Sirs:

The City has reviewed the status of the Order signed by Judge Gurfein in the referenced case on July 2, 1974 and finds that defendant, Joint Apprenticeship Committee (JAC), has failed to comply with its terms.

The Order directs the JAC, inter alia to assign for employment 20 non-white advanced apprentices by July 12, 1974. When the JAC failed to comply with this requirement, the President of Local 28, Edward Stack and co-counsel to the JAC, Sol Bogen, met with James McNamara, Director of the City's Office of Contract Compliance, during the first week of August to discuss the situation. At that time JAC's delinquency was explained to be the result of certain ill-defined "misunderstandings" concerning the terms of the Order. Nevertheless, Mr. McNamara was assured that all "misunderstandings" had been clarified by the meeting and that compliance with the Order would be forthcoming. However, as of this writing there are only 14 non-white advanced apprentices employed out of the total of 20 mandated by the Court to be so employed by July 12, 1974. This situation obtains despite the fact that the City has made repeated efforts to refer qualified candidates to JAC for processing and vacant positions exist in this craft on City and/or Board of Education construction sites.

Further, JAC has not assigned for employment any of the new class of 60 apprentices ordered by the Court to be indentured and so assigned by September 30, 1974. It is doubtful whether this mandate will be executed in the short time remaining. Unless JAC takes immediate steps to correct this situation, we must regard such inaction as an additional violation of Judge Gurfein's July 2nd decree.

The City remains willing to assist the JAC in fulfilling its legal responsibilities. However, if the JAC persists in engaging in actions which result in the violation of the Order of the federal court, the City will move the Court for the imposition of such judicial sanctions against the members of the JAC as may be deemed appropriate. We give this notice without hesitation or qualification of any sort.

In view of the seriousness of the present situation we deem it incumbent upon co-counsels for the JAC to reply immediately to this letter.

Sincerely,

*Beverly G. Davis*  
Beverly G. Davis  
Assistant Corporation Counsel

NG/dg

EXHIBIT C



To:

Paul Curran, Esquire  
United States Attorney  
United States Courthouse  
Foley Square  
New York, N.Y. 10007

Attn: Taggart D. Adams, Esquire

Robert Schluter  
Coordinator of Training  
Sheetmetal Industry  
420 Lexington Avenue  
New York, N.Y.

Edward O'Reilly  
Secretary  
Local 28, Joint Apprenticeship Committee  
420 Lexington Avenue  
New York, N.Y.

Milton Molsky  
Chairman  
Sheetmetal workers, Local 28  
Joint Apprenticeship Committee  
420 Lexington Avenue  
New York, N.Y.

John J. McKeough  
Member, Sheetmetal Workers, Local 28  
Joint Apprenticeship Committee  
420 Lexington Avenue  
New York, N.Y.

Roy Resnick  
Member, Sheet Metal Workers,  
Local 28, Joint Apprenticeship Committee  
420 Lexington Avenue  
New York, N.Y.

Michael Minieri  
Member, Sheet Metal Workers  
Local 28, Joint Apprenticeship Committee  
& Sheet Metal Workers' Local Union 28  
1790 Broadway  
New York, N.Y.

Howard Bretz  
Member  
Sheet metal Workers, Local 28  
Joint Apprenticeship Committee  
& Sheetmetal Workers' Local Union 28  
1790 Broadway  
New York, New York

John Dasch  
Member,  
Sheetmetal Workers Local 28  
Joint Apprenticeship Committee  
& Sheetmetal Workers' Local Union 28  
1790 Broadway  
New York, N.Y.

Sol Bogen, Esquire  
1 Penn Plaza  
New York, New York 10001

Steven Glassman  
United States Attorney  
United States Courthouse  
Foley Square  
New York, N.Y. 10007

EXHIBIT C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT of NEW YORK

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION and the  
CITY of NEW YORK,

Plaintiff

71 Civ. 2877  
(HFW)

Affidavit

-against-

LOCAL 638, etc., LOCAL 28, etc.  
et al.,

Defendants

STATE of NEW YORK  
COUNTY of NEW YORK  
SOUTHERN DISTRICT of NEW YORK } ss:

BERNARD WOODS, being duly sworn, deposes and say:

1. I am the Training Coordinator in the Mayor's Office of Contract Compliance/Construction for the City of New York. I have held this position since 1971.
2. My duties and responsibilities include the recruitment of non-white workers for placement as trainees on City and City assisted construction projects, and the monitoring of trainee assignments, pursuant to Mayoral Executive Order 20 (July 15, 1970), which requires contractors to make a good faith effort to employ one minority trainee for every four journeymen employed in a craft, where practical.
3. Of almost two dozen building and construction trades, only sheet metal has refused to permit trainees to be assigned to work, and no minority sheet metal trainees were placed from the issuance of the Executive Order in 1970 until March, 1974. At that time, six trainees were placed at four jobsites as a result of community demonstrations demanding that the contractors employ minority workers. Local 28, however, refused to permit these trainees to work. They remained as observers until, on information and belief, the contractors ordered the union foremen to allow them to work, at which point the union workers left the jobs.



4. On April 8, 1974 I was notified by Robert Schluter, Coordinator for the Joint Apprenticeship Committee, that the six trainees could be put to work, and on that date they were put to work on the previously closed sites. I was instructed by my superior, James McNamara, that pursuant to an order to be entered by Judge Gurfein the following day, I was not to refer or attempt to refer for placement any other sheet metal trainees until after June 30th.

5. On July 2, 1974 I called Mr. Schluter to arrange appointments for the processing of the additional 14 trainee/advanced apprentices called for in the Order of Judge Gurfein which had been signed that day. During the following week, per arrangement, I personally accompanied 11 applicants to Mr. Schluter's office for testing and physical examinations. After having tested most of these men, Mr. Schluter excused himself from one testing session to answer a telephone call. On his return, he informed me that the call had been from Sol Bogen (Counsel for Local 28 and Co-counsel for the JAC) and that Mr. Bogen had instructed him to refuse to accept any applicant who did not have at least 1 year of sheet metal experience. Of the 11 applicants, only 2 had such experience. On telephone instructions from Mr. McNamara, I told the rest of the men to go home. The 2 were accepted and assigned for work on July 12, 1974.

6. About a week or 10 days later Mr. McNamara advised me that after discussions with Messrs. Schluter, Bogen and Rothberg (the latter being Counsel for the Contractor's Association and co-Counsel for the JAC) it had been agreed that applicants should have 6 months sheet metal experience. Within 3 or 4 days I had recruited 12 such applicants and arranged with Mr. Schluter for their processing in shifts of 4 or 5 per day commencing the week of July 29. These were tested by Mr. Schluter and given physical examinations. Several more days elapsed until, after a few telephone calls, Mr. Schluter finally advised me that he had sent a messenger to obtain the results for the physical examination from the laboratory and that the men could probably begin work the following week.

7. Also during the week of July 29 I gave ~~to~~ Mr. Schluter a list of job sites at which there were a sufficient number of sheet metal journeymen currently employed to warrant the placement of these trainees under Executive Order 20. He advised me that he would have to check with the Local 28 representative as to whether these sites were appropriate.

8. On or about August 5, 1974 I visited Mr. Schluter at his office. He told me the sites had not been cleared by the union. He also told me that Edward O'Reilly, an officer of Local 28, was looking at the applications to verify the experience of the applicants, and that Mr. O'Reilly had instructed him not to assign any further trainee/advanced apprentices.

9. On or about August 7 I called Edward Stark, president of Local 28. He said he would not talk to me or to anyone from my office and that I should call his lawyer if I had anything to discuss with him.

10. I immediately report this conversation ~~to~~ Mr. McNamara, as well as the lack of progress to date and the statements made to me by Mr. Schluter. On information and belief, Mr. McNamara then called Messrs. Stack, Bogen, Rothberg and Schluter, reaching only Mr. Schluter but leaving messages for the others, and stated that he would ask the Corporation Counsel to commence contempt proceedings if there were any further such delays in compliance with the July 2nd Order.

11. Upon returning from lunch that day, Mr. McNamara and I found Messrs. Bogen and Stack waiting at Mr. McNamara's office. We met with them and Mr. McNamara repeated his earlier message. Mr. Stack stated that he would become personally involved in the processing of the applicants and Mr. Bogen stated that he would review appropriate job sites with Mr. Rothberg for the placement of trainees. I was told by them that beginning August 12 the trainees would be placed.

12. On August 8 I received a call from Mr. Schluter advising me that I could send 3 men, I did so and these were placed on August 9.

13. On or about August 12 I called Mr. Schluter. He informed me that he was awaiting written verification from sheet metal contractors as to the number of trainees they were required to employ under their contracts with the City and the Board of Education. Mr. McNamara had left on vacation that morning.



14. On or about August 13 I called Mr. Schluter to ascertain the status of the remaining men. He asked me to attend a meeting the next day with him, Mr. Stack and Mr. Rothberg at the office of Local 28. I attended the meeting on or about August 14 and informed those above named that my instructions were to contact the Corporation Counsel if the placements were not made. Mr. Stack and I went over the list of jobsites and he said he would take action to assure that all the men were placed.

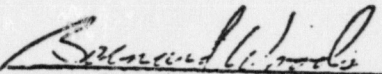
15. One placement was made on August 15. Later that day I called Mr. Schluter. I told him I was leaving for a 3 week vacation on August 19 but that Miss. Mary Denby of my office had full instructions from me and would handle the matter in my absence. Mr. Schluter told me that 5 more men would be placed the week of August 19.

16. On August 21 Miss Denby reached me by telephone in Ohio to report her lack of success in obtaining placement by the JAC of the 5 or any other trainees. I called Mr. Schluter long distance and he said no additional trainees would be placed. I returned to work on August 26, curtailing my vacation by two weeks. In the interim, 2 trainees had been placed through Miss Denby's continued efforts and 3 were placed on the day of my return. (One of these was not an additional man, but one who had been laid off from an earlier placement).

17. On September 3 one more trainee was placed, leaving 4 still to be placed. A further placement of 1 man was not made until September 24. During this period I was in constant contact with Mr. Schluter. He said that trainees could not be placed because the only sites at which sheet metal work was in progress did not employ 4 journeymen. I pointed out that several big jobs under the auspices of the Education Construction Fund, such as the New York Telephone and Downtown Manhattan High School jobs employed only 2 trainees although the large numbers of journeymen employed warranted additional trainees. Mr. Schluter said that he had a "political problem" since Local 28 objected to minority trainees being assigned to any job while journeymen union members were unemployed. He also said that he wanted to spread trainees among contractors

even though, under the 1 for 4 requirement, he could presently make assignments of the remaining 3 trainees.

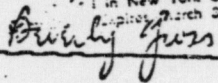
18. The last 3 trainees were not assigned until September 30, twelve weeks after my initial call to Mr. Schluter on July 2nd and fully 2½ months after the date ordered by the Court.

  
Bernard Woods

Sworn to before me

this 3<sup>rd</sup> day of October, 1974.

Notary Public, State of New York  
No. 31-4524229  
in New York County  
Expires March 30, 1976

  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION and the  
CITY OF NEW YORK,

Plaintiffs,

- v -

LOCAL 639 . . . LOCAL 23 of the  
SHEETMETAL WORKERS' INTERNATIONAL  
ASSOCIATION, LOCAL 23 JOINT  
APPRENTICESHIP COMMITTEE . . .  
SHEETMETAL CONTRACTORS ASSOCIATION  
OF NEW YORK CITY, INC., etc.,

Defendants.

71 Civ. 2877 (HPW)

PRE TRIAL ORDER

On December , 1974, the attorneys for the parties herein appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken:

1. The parties agreed that the trial of this action shall be based upon the pleadings thereto, and none of the issues raised therein is abandoned.
2. The parties have stipulated that the facts set forth in Exhibit A annexed hereto are not in dispute in this action, each party reserving the right to object to the materiality and relevancy of any such stipulated fact.
3. While reserving the right to add or subtract therefrom, plaintiffs and third and fourth party defendant New York State Division of Human Rights. ('the State') propose to introduce the exhibits listed in Exhibit B annexed hereto, and defendants propose to introduce the exhibits listed in Exhibit C annexed hereto.

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4. The parties have stipulated that there is no dispute as to the following points of law:

a. Sheet Metal Workers' International Association, Local Union No. 28 ("Local 28"), sued herein as Local 28, Sheet Metal Workers International Association, is a labor organization within the meaning of 42 U.S.C. § 2000e(d) and a union within the meaning of § 81-7.0 of the Administrative Code of the City of New York, is engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e(d) and (e), and is properly named as a defendant in this action under 42 U.S.C. § 2000e.

b. Sheet Metal Workers' (Local Union #28) Joint Apprenticeship Committee and Trust ("JAC"), sued herein as Sheetmetal Workers Local 28 Joint Apprenticeship Committee, is a joint labor - management apprenticeship committee within the meaning of 42 U.S.C. § 2000e - 2(d), and Section 81-7.0 (1a) of the Administrative Code of the City of New York, is engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e, and is properly named as a defendant in this action under 42 U.S.C. § 2000e.

c. Sheet Metal and Air Conditioning Contractors National Association, New York City Chapter, Inc. ( Contractors Association") sued herein as Sheetmetal Contractors Association of New York City, Inc., is an association in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e which has a collective bargaining agreement with Local 28, and is properly named as a defendant in the complaint under Rule 19(a)(1) of the Federal Rules of Civil Procedure.

5. The issues for trial are whether the defendants Local 28 and JAC are engaged in a pattern and practice of



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denial of and resistance to the full enjoyment by nonwhite workers<sup>2</sup> of the rights guaranteed to them by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), and have violated Chapter I, Title B of the Administrative Code of the City of New York ("Title B").

A. PLAINTIFFS' AND THE STATE'S  
CONTENTIONS

6. Plaintiffs' and the State's contentions with respect to these issues include the following:

(a) Prior to the effective date of Title VII and Title B, and continuing to the present, the defendants Local 28 and JAC have maintained discriminatory practices in the recruitment, selection, training, admission to membership, referral, and employment of nonwhite workers in New York City.

(b) The defendants Local 28 and JAC have a reputation in nonwhite communities of discriminating; this reputation operates to discourage nonwhite workers from applying for membership in Local 28 and the Local 28 apprenticeship program.

(c) The defendants Local 28 and JAC have effective control of employment in the sheetmetal industry in New York City, and by virtue of this control and the discriminatory practices of Local 28 and JAC in the recruitment, selection, training, admission and referral of nonwhites, qualified non-white sheet metal workers have been denied equal access to work opportunities in the sheet metal industry.

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<sup>2</sup> Hereinafter, the term non-white will refer to black and Spanish-surnamed individuals.

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(d) Defendant Local 28 has denied qualified non-white persons direct access to membership in Local 28 while granting such access to white persons by the following practices, among others: (i) selective organization of non-union shops; (ii) the use of journeymen tests that have not been validated under EEOC guidelines; and (iii) the acceptance of transfers to Local 28 of white members of affiliated sister local unions while refusing transfers of non-white members of Local Union 400, Sheetmetal Workers' International Association ("Local 400") and other affiliated sister local unions.

(e) Since at least 1963, Local 28 has refused to accept transfers from affiliated sister local unions unless the individual seeking to transfer was a former member or apprentice of Local 28. This restriction, in conjunction with Local 28's and JAC's past and present discriminatory practices in the selection, recruitment, training, admission and referral of non-whites, has denied qualified non-white sheetmetal workers equal access to work opportunities in the sheetmetal industry.

(f) Prior to the effective dates of Title VII and Title B, and continuing to the present, Local 28 and JAC have given preference in admission, selection, recruitment and referral to relatives or friends of members or apprentices of Local 28. This policy, because the vast majority of members and apprentices of Local 28 are and have been white, has resulted in the exclusion of non-whites from employment opportunities in the sheetmetal industry.

(g) Local 28 and JAC have maintained informal methods of referral and hiring which ensure that employment is available almost exclusively to the predominantly white members of Local 28.



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(h) Local 28 and JAC have unreasonably restricted and acquiesced in the restriction of the size of the membership of Local 28, thereby denying qualified non-white workers access to employment opportunities in the sheetmetal industry.

(i) Local 28 and JAC have issued or have acquiesced in the issuance of work permits to members of affiliated sister local unions and members of allied construction unions, all of whom are white, to perform sheetmetal work within the jurisdiction of Local 28, while denying qualified non-whites access to membership in Local 28, thereby denying them equal access to employment opportunities in the sheetmetal industry.

(j) Local 28 and JAC have permitted the members of Local 28, the vast majority of whom are white, to work a substantial amount of man-hours of overtime while denying qualified non-whites access to membership in Local 28, thereby denying them equal access to employment opportunities in the sheetmetal industry.

(k) Local 28 and JAC have refused to permit sheetmetal contractors with whom Local 28 has collective bargaining agreements to fulfill the affirmative action obligations toward non-white workers imposed upon those contractors by Executive Order 11246 and thereby have also interfered with the implementation of the obligations of the City of New York as a contractor under this Executive Order.

(l) Prior to the effective date of Title VII and Title B and continuing to the present, defendants Local 28 and JAC have maintained discriminatory standards and practices in selection for and admission to the Local 28 apprentice program and such practices have discriminated against non-white persons in New York City.

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(m) Prior to the effective date of Title VII and Title B and up to and including the year 1966, defendants Local 28 and JAC preferentially admitted to the Local 28 apprentice program relatives and friends of existing members of Local 23 which practice resulted in the exclusion of qualified non-white applicants.

(n) Subsequent to the effective date of Title VII and Title B, the defendants Local 28 and JAC have adopted selection procedures and standards for admission to the Local 28 apprentice program which operate individually and in combination to prevent non-whites from having equal access to the program, and which are not correlated to success in employment as a sheetmetal worker.

(o) Subsequent to the effective date of Title VII and Title B, the defendants Local 28 and JAC have violated the order of the Honorable Jacob Markowitz, Justice, New York Supreme Court entered in the action of State Commission For Human Rights v. Farrell, Index No. 40928/64, and such violations have denied non-whites equal access to the apprentice program and journeyman status in Local 28.

(p) Defendants Local 28 and JAC have adopted and implemented an apprentice program which (i) has failed to provide a sufficient number of graduates into journeyman status for the sheetmetal industry; (ii) is longer than necessary to train persons for journeymen status; and (iii) requires testing and training not necessary nor reasonably related to the actual work performed by journeymen sheetmetal workers; all of which operate individually and in combination to prevent non-whites from gaining equal access to journeyman status.

(q) Local 23 has organized and subsidized a tutoring program for relatives and friends of Local 23



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members designed to assist such relatives and friends to score higher on the Local 28 apprentice applicants examination; this policy, because the vast majority of members and apprentices of Local 23 are and have been white, has prevented non-whites from gaining equal access to the program.

7. In order to remedy the effects of the above described discrimination, defendants have been and are under an obligation to take affirmative action to recruit, select, train, admit to membership in Local 28 and the apprentice program, refer to employment and employ substantial numbers of non-white workers.

8. As a result of the above-described discrimination, non-whites have suffered financial loss and are, therefore, entitled to receive back pay in amounts to be determined subsequent to the trial of this action.

B. CONTENTION'S OF DEFENDANT LOCAL 28

9. Local 28 has not violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq.

10. Local 28 has not violated Chapter I, Title B of the Administrative Code of the City of New York.

11. At all times relevant herein, Local 28 has maintained fair, reasonable and non-discriminatory procedures for recruitment, selection, training, admission and job referral of all persons.

12. Local 28 has not discriminated against any person or group of persons in regard to recruitment, selection, training, admission and job referral on account of race, creed, color, religion, sex, age, national origin or otherwise.

13. Persons are admitted to the membership of Local 28:

(a) upon graduation from the JAC apprenticeship program;

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(b) by transfer from sister local unions affiliated with International Association;

(c) successful performance on a written and practical examination, and

(d) employment with a newly organized sheet metal contractor certifying to need for applicant and applicant's ability to perform at journeyman standards of workmanship.

These procedures of admission are fair, reasonable and non-discriminatory and are generally known throughout the jurisdiction of Local 28, to wit: the five (5) boroughs of New York City.

14. The terms, conditions and provisions of employment of journeyman and apprentice sheet metal workers represented by Local 28 are as set forth in the collective bargaining agreements negotiated by and between Local 28 and sheet metal contractors, which are non-discriminatory in all respects.

15. Qualified sheet metal workers have not been denied admission to membership of Local 28.

16. Local 28 has accepted or denied (i) transfers from affiliated sister local unions and (ii) admission to membership without regard to race, creed, color, religion, sex, age or national origin.

17. Local 28 has not maintained at any time a hiring hall or referral system of any kind.

18. The size of the membership of Local 28 is determined by fair, reasonable and non-discriminatory considerations, including employment opportunities and the lack thereof.

19. Local 28 has not engaged in any practice or procedure whereby qualified Non-Whites were denied access to



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membership to Local 28 or employment opportunities in the sheet metal industry.

20. The employment of journeyman and apprentice sheet metal workers by sheet metal contractors in signed agreement with Local 28 is governed by the collective bargaining agreement of the parties, including the grievance and arbitration provisions thereof.

21. Local 28 does not control or influence the employment of sheet metal workers by the City of New York or by other non-union employers.

22. Local 28 has complied in all respects with the Orders of the Supreme Court of the State of New York (Markowitz, J.) entered in the proceeding of Lefkowitz v. Farrell, etc., et al., Index No. 40928/64.

23. Local 28 has not organized, established or subsidized any program which was intended to or had the effect of preventing Non-Whites from having equal access to the JAC apprentice program.

24. No Non-White has suffered any financial loss as the result of any act or conduct by Local 28.

25. Based upon Local 28's contentions herewithabove set forth, this action should be dismissed.

C. DEFENDANT JAC'S CONTENTIONS

26. The JAC has not violated Title VII.

27. The JAC has not violated Title B.

28. That at all times relevant herein, the JAC has maintained a fair, reasonable and non-discriminatory program of recruitment, selection and admission for applicants and has further maintained a fair, reasonable and non-discriminatory program of training for apprentices.

29. The JAC has a reputation for maintaining a fair, reasonable and non-discriminatory program.

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30. The JAC's control of employment of Apprentices is limited to contractors in signed agreement with Local 23.

31. That at all times relevant herein, the JAC has maintained a fair, reasonable and non-discriminatory program and has not given preference in admission, selection, recruitment and employment to relatives or friends of members or apprentices of Local 28.

32. The JAC refers out for employment indentured apprentices in a fair, reasonable and non-discriminatory manner.

33. The JAC is not involved in determining either the size of the membership of Local 28 nor the number of apprentices in the JAC program.

34. The JAC is not involved in the issuance of work permits.

35. The JAC is not involved in the amount of overtime work performed by members of Local 28 and further the JAC has not denied any qualified non-white access to membership in Local 28 and employment opportunities in the sheet metal industry.

36. The JAC has not interfered with sheet metal contractors nor the City of New York in meeting their affirmative action obligations.

37. That at all times relevant herein, the JAC has maintained a fair, reasonable and non-discriminatory program of selection and admission of applicants to the program.

38. Since the effective date of Title VII the JAC admitted applicants to the program in a fair, reasonable and non-discriminatory manner without regard to relationship to members of Local 28.

39. That at all times relevant herein, the JAC has maintained fair, reasonable and non-discriminatory selection procedures and standards for admission to the apprenticeship



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program and further that said selection procedures and standards are related to success in employment as a sheet/metal worker.

40. That at all times relevant herein, the JAC has fully complied with the order of the Hon. Jacob Mankowitz, Justice, New York Supreme Court entered in the action of Leikowitz v. Farrell, Index No. 40928/64.

41. The JAC does not determine the number of apprentices in the program. The length of time required for successful completion of the apprenticeship program is necessary in order to properly train persons for journeyman status. The JAC requires testing and training necessary and reasonably related to the actual work performed by journeyman sheet metal workers.

42. Based on the JAC's contentions as set forth hereinabove, this action should be dismissed.

43. That no non-white has suffered financial loss as a result of the program administered by the JAC.

D. PLAINTIFFS' AND THE STATE'S WITNESSES

While reserving the right to add to or subtract from this list, plaintiffs and the State propose to call some or all of the following witnesses:

1. Officials and/or members of Local 28, including the following:

- a. Edward J. Stack
  - b. Dan Pasquiusci
  - c. Edward O'Reilly
  - d. Robert G. Schluter
  - e. Thomas Carlough
2. Emanuel Anen
  3. Louis Cammarato

ROSENTHAL AND GOLDBERGER  
44 Court Street  
Brooklyn, New York 11201

Attorneys for defendant Joint Apprenticeship  
Committee and Trust

By: William Rothberg, Esq.

LOUIS J. LEFKOWITZ  
Attorney General of the State of New York  
Two World Trade Center  
New York, New York 10047

Attorney for third and fourth-party defendant  
New York State Division of Human Rights

By: Dominic Tummaro, Esq.

HENRY F. WERKER, D. J.

This is an action filed in 1971 by the United States pursuant to § 707(a) of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-6(a). It was originally part of a larger action against four unions in the building trades industry and their joint apprenticeship committee for engaging in a past and continuing pattern and practice of discrimination in admission and employment of non-whites. Soon after issue was joined in that case separate trials were ordered for



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each union and its related co-defendants.<sup>2</sup> of the four groups for purposes of trial, the City of New York (the City) was granted leave to intervene in that portion of the action relating to Local Union No. 28 of the Sheet Metal Workers' International Association (Local 28). United States v. Local 638, Enterprise Ass'n, etc., 347 F. Supp. 184 (S.D.N.Y. 1972).<sup>3</sup>

The defendants who were on trial before this court from January 13 to February 3, 1975 are Local 28, Local 28's Joint Apprenticeship Committee and Trust (JAC), and, for purposes of relief only, the New York City Chapter of the Sheet Metal and Air Conditioning Contractors' National Association (Contractors' Association). By virtue of third and fourth party complaints filed by Local 28 and JAC, the New York State Division of Human Rights (the Division) is a defendant in this action for purposes of relief. The third and fourth-party pleadings were predicated upon administrative and judicial proceedings instituted by the State Attorney General against Local 28 and JAC in which the defendants were directed to end racially discriminatory selection and admission practices under the supervision and direction of the Division.<sup>4</sup> See State Commission on Human Rights v. Farrell, 43 Misc. 2d 958, 252 N.Y.S.2d 649 (Sup. Ct. N. Y. Cnty 1964). Although a nominal defendant in this case, the Division has in its papers and at trial consistently aligned itself with the plaintiffs' cause.

The complaint filed by the United States (the government) alleges that Local 28 is engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights secured to them by Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e-2(c) and 2000e-2(d). The pattern and practice alleged includes, but is not limited to, the following:

(a) Failing and refusing to admit nonwhite workmen . . . as journeymen members on the same basis as whites are admitted;

(b) Failing and refusing to refer nonwhite workmen for employment . . . (within its jurisdiction) . . . on the same basis as whites are referred by applying standards for referral which have the purpose and effect of ensuring referral priority to . . . (its) . . . members . . . ;

(c) Failing and refusing to recruit blacks for membership in and employment through . . . (Local 28) . . . on the same basis as whites are recruited;

(d) Failing and refusing to permit contractors with whom . . . (Local 28) . . . has collective bargaining agreements to fulfill the affirmative action obligations imposed upon those contractors by Executive Order 11246 by refusing to refer out blacks whom such contractors wish to employ;

(e) Failing and refusing to take reasonable steps to make known to nonwhite workmen the opportunities for employment in the . . . (sheetmetal trade) . . . , or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and practices.

The government's complaint does not allege specific acts of discrimination by defendant JAC. To the extent, however, that plaintiffs have succeeded in establishing such violations at trial, the government's complaint is



deemed amended to conform to the proof. See Rule 15(b), Fed. R. Civ. P..

The City's complaint (¶ 10) alleges that Local 28 is engaged in a pattern and practice of resistance to the full enjoyment by non-whites of rights which are secured to them by § B 1-7.0 of the New York City Administrative Code as well as by Title VII of the 1964 Civil Rights Act. It sets forth the same allegations as to Local 28 quoted above, and adds as an additional example of discriminatory practice:

(f) Adopting standards for admission to union membership which are not job related and which operate to disqualify a disproportionate number of non-whites for membership.

The City's complaint, furthermore, alleges that defendant JAC is also engaged in a pattern and practice of discrimination, which includes, but is not limited to:

(a) Failing and refusing to make information concerning apprenticeship opportunities available to non-whites on the same basis as it is made available to whites;

(b) Failing and refusing to make apprenticeship opportunities available to non-whites on the same basis as they are made available to whites;

(c) Adopting standards for the selection of apprentices which are not job related and which operate to disqualify a disproportionate number of non-white applicants for apprenticeship.

The allegations of both complaints have been largely substantiated by the evidence produced at trial.

## BACKGROUND FACTS

### A. Local 28

1. Local 28 is an unincorporated labor union.

It is the recognized bargaining agent for journeymen and<sup>5</sup> apprentice sheet metal workers hired by sheet metal contractors within its geographical jurisdiction.

2. The geographical jurisdiction of Local 28 includes the five boroughs of the City of New York.

3. A non-white has never been an officer of Local 28, or a member of the Executive Board of Local 28.

4. Since its inception in 1913 Local 28 has been governed by its own Constitution and By-Laws, and by the Constitution and Ritual of the Sheet Metal Workers' International Association. Prior to November 1946, the Constitution of the International Association contained a provision for the establishment of an "auxiliary" local union when there was a "sufficient number of eligible Negro applicants." As stated in this provision, the auxiliary was:

subordinate to the established and affiliated white local union and shall be represented by said white local union at all conferences and conventions, including International Conventions. . . . The same initiation, re-initiation and reinstatement fees shall apply to auxiliary members and the privilege of transfer shall be limited to transferring from one auxiliary to another auxiliary.

5. As of October 1, 1974 Local 28 had collective bargaining agreements with approximately 133 sheet metal



contractors in New York City. These contractors do not employ an individual to perform sheet metal work within the trade jurisdiction of Local 28 unless the individual is a member or apprentice of Local 28, or has been given an "identification slip" (ID-Slip) by Local 28, permitting him to temporarily work in the sheet metal industry within the geographic jurisdiction of Local 28. The reason for this is that members of Local 28 will not work with sheet metal workers who do not fit within either of the two categories above. Thus, despite a contract provision which grants Local 28 contractors autonomy in hiring, Local 28 has substantial, if not complete, control of job opportunities which arise with them.

6. In preventing its contractors from hiring non-union non-white sheet metal workers Local 28 has precluded them from fulfilling the affirmative action obligations imposed on them by Presidential Executive Order 11246, 3 C.F.R. Chapter IV § 202, and Mayoral Executive Order 71, April 2, 1968, 96 The City Record 2342 (April 10, 1968). Those orders require recipients of federal construction funds and city construction contracts to take affirmative action to ensure that all applicants for employment enjoy equal access to work opportunities without regard to race, color or national origin.

7. Since 1960 there have been four methods by which individuals have been admitted to membership in Local 28:

- a) successful completion of a four-year

- a) apprenticeship program administered by JAC;
- b) successful performance on a written and practical examination administered by the Examining Board of Local 28 (journeyman's test);
- c) transfer from a sister local union, affiliated with the Sheet Metal Workers' International Association;
- d) employment with a newly organized sheet metal contractor who will certify as to its need for the applicant and the applicant's ability to work in accordance with journeyman standards of performance.

The availability of the first method is determined by the collective bargaining agreement between Local 28 and the employers. The availability of the other three methods is determined by the Executive Board of Local 28, with the approval of the Union membership.

8. As of July 1, 1974, 3.19% of the union's total membership (including pensioners) was non-white.

9. Between January 1965 and July 1974 Local 28 admitted 1103 new members, 79.78% from the apprentice program, 9.07% through the use of written and practical examinations, 5.98% via transfer from sister unions, and 2.81% from newly organized sheet metal shops. Of the 1103 new members, 111 or 10.06% were non-white.

10. Local 28 does not maintain a hiring hall. Referral and hiring are done informally, through word of mouth and contacts with other members, apprentices and contractors. Sometimes business agents call Local 28 members and advise them of job opportunities; sometimes members call the agents seeking information on work openings. In



good times, each business agent makes a job referral approximately five to ten times a week.

11. Local 28 refused to participate in the New York Plan when it was in effect in New York City. The Plan was a joint industry, City and State effort to increase participation of minority employees in the construction trades.

B. The Contractors' Association

12. The Contractors' Association is an association of building contractors in New York City who are engaged in sheet metal construction work. It has a collective bargaining agreement with Local 28, and its members employ approximately 70-80% of the union's members and apprentices.

13. The manpower requirements of the Contractors' Association is a mandatory subject of collective bargaining by and between the Association and Local 28.

C. JAC and the Apprentice Program

14. JAC is a joint labor-management committee composed of representatives of Local 28 and of the Contractors' Association. It administers the Local 28 apprentice program.

15. A non-white individual has never been a member of JAC.

16. Since 1964 the operation and organization of the apprentice program has been governed by the Standard Form Union Agreement (the Collective Bargaining Agreement), the order and opinion in State Commission on Human Rights v. Farrell, supra, which includes the Corrected Fifth Draft of Standards for the

Admission of Apprentices for the Sheetmetal Industry of New York City, New York (Corrected Fifth Draft), JAC's Agreement and Declaration of Trust, and JAC's Rules and Regulations.

17. In 1965 non-white enrollment in the apprentice program was .37%. It increased to a high of 21.80% in July 1967, fell to 9.77% in July 1973 and returned to 13.99% in July 1974.

18. The Local 28 apprentice program presently consists of eight terms of six months each. Apprentices attend ten all-day class sessions per term, receiving eight hours of pay for each such session. <sup>8</sup> The other days they work for employers who have collective bargaining agreements with Local 28.

19. Under the most recent (1972) Collective Bargaining Agreement apprentice classes are to be appointed every six months, and the size of the entire program is to be stabilized at 568 apprentices. Between January 1, 1972 and July 1, 1974 the total number of apprentices enrolled in the program has decreased:

January 1, 1972	- 568
July 1, 1972	- 482
November 11, 1972	- 517
January 1, 1973	- 498
July 1, 1973	- 399
January 1, 1974	- 323
July 1, 1974	- 286



20. An apprentice must pass a physical exam and be between the ages 18 and 25 at the time of admission, although exceptions up to age 30 are made for time spent in military service.

21. Since 1969, as a result of the Corrected Fifth Draft contained in the New York Supreme Court decision in State Commission on Human Rights v. Farrel, supra, apprentices are required to have high school diplomas or equivalency certificates at the time of admission. For the years 1967-1968 only three years of high school education were required. For the years 1965-1966, only two years of high school education were required. Prior to 1965 apprentices were appointed from an applicants list, with high school diplomas, veteran's status and recommendations of relatives by members of Local 28 receiving some weight in the appointment process.

22. Application forms utilized for the apprentice program require the applicant to list his police record, if any, and his citizenship.

23. Applicants satisfying the age, education and physical requirements are admitted to the apprentice program in accordance with the ranking obtained on an apprentice entrance exam. There is no cut-off pass/fail score for the entrance exam, which is an aptitude exam consisting of tests in five areas (the JAC battery):

- a) mental alertness
- b) mechanical reasoning

- c) space relations
- d) mathematical computations and concepts
- e) mathematical analysis and problem solving

24. Since 1966 the choice of tests in the aforementioned areas, their administration, and the ranking of those tested has been performed by Stevens Institute of Technology (Stevens Institute). In 1965 and 1966 this work was done by the New York Testing and Advisement Center.

25. None of the defendants have kept records of the race or the ethnic identification of persons who have applied or sought to apply to the apprentice program, of persons whose applications have been rejected prior to the aptitude examination, or of persons who have taken the aptitude examination and have been rejected or have themselves rejected admission to the apprentice program.

26. None of the defendants prior to 1973 kept records of the race or ethnic identification of persons taking the apprentice aptitude examination.

27. No one fails out of the apprentice program because of school performance, although he may be left back.

28. JAC assigns apprentices for employment. However, no apprentice can begin working for a Local 28 employer without first receiving a union "apprentice work card."

29. The current Collective Bargaining Agreement between Local 28 and the Contractors' Association provides:



## ARTICLE IX

§ 3(c). There shall be a moratorium on apprentices during the period of the six (6) hour day. Apprentices shall be appointed, but work assignments deferred until return to the seven (7) hour day and shall then be made by the Joint Apprenticeship Committee in accordance with the required needs of the program.

Since October 31, 1973, the industry has been on a six hour day.

### DISCRIMINATION IN THE APPRENTICE PROGRAM

Prior to the institution of a new selection procedure in accordance with the Corrected Fifth Draft, Local 28 alone controlled admission to the apprentice program. Union officers testified that the basic selection criterion applied by Local 28 was the applicant's relationship to, or friendship with, union members. Thus the union's selection procedure was largely nepotistic, with the result that a majority of the individuals enrolled in the apprentice program were related in some manner to members of Local 28. This is further borne out by evidence that no Black was ever enrolled in the apprentice program, and at least during the period from January 1, 1960 through March 15, 1965, only one other non-white individual was a Local 28 apprentice.

Congress's objective in enacting Title VII of the 1964 Civil Rights Act was to achieve equality of employment opportunity by removing those selection barriers which have historically operated to favor white employees; therefore

under the Act,

practices, procedures or tests neutral on their face, and even neutral in terms of their intent cannot be maintained if they operate to 'freeze' the status quo of . . . prior discriminatory employment practices.

Griggs v. Duke Power Co., 401 U.S. 424, 429-30 (1970).

whether the new selection procedure provided for in the Corrected Fifth Draft discriminates against non-whites and/or operates to "freeze the status quo" of the defendants' prior discrimination would best be determined by a thorough statistical analysis of the entire procedure as a whole. However, the fact that no records were kept of applicants' race and national origin has precluded this approach.<sup>10</sup> Plaintiffs at trial therefore sought to establish that each individual component of the selection procedure operates separately to discriminate against non-whites. For the reasons discussed below the court finds that the selection procedure does not fully comport with the mandate of Title VII.

A. The Apprentice Entrance Exam

Plaintiffs' argument as to the JAC battery of tests was based almost exclusively upon the testimony and statistical analysis of Dr. Raymond Katzell, Professor of Psychology at New York University, and an expert in industrial psychology and psychological testing. Dr. Katzell analyzed the percentage of identified non-whites tested, as opposed to that of whites tested, who appeared in the top 50, top 100, and top half of the aggregate rankings for all eight exams administered between April 1968 and March 1973.<sup>11</sup> He



found that the percentage of non-whites at each level was smaller than that of whites to a statistically significant degree. This means, in the language of the industrial psychology profession, that the apprentice entrance examination as administered in those eight testing sessions had an "adverse impact" on non-whites, and that the impact was not likely to have happened by mere chance (i.e.: was likely to have occurred by chance on the basis of a random sampling no more than one time in twenty).

Dr. Katzell also separately analyzed each of the eight test batteries in the same manner. He found that on at least one level in each of seven batteries there was a statistically significant difference in percentage. There was no statistically significant difference on the eighth battery. The more conclusive result achieved in the aggregate analysis stems from the larger size of the applicant sample involved.

Dr. Katzell further testified that the presence of statistically significant adverse impact on the JAC battery is not surprising, as Blacks and other economically disadvantaged subgroups perform competitively less well than whites on verbally-based tests. This conclusion is generally shared by the psychology profession. See Cooper and Sobol, Seniority and Testing Under Fair Employment Laws: A General Approach to Objective Criteria of Hiring and Promotion, 82 Harv. L. Rev. 1598 at 1639 (1969); indeed, JAC's expert witness, Dr. Judah Gottesman, senior consulting industrial

psychologist at the Stevens Institute of Technology, testified in substantial agreement. See also Boston Chapter NAACP Inc. v. Beecher, 504 F.2d 1017, 1021 (5th Cir. 1974); Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Comm'n, 482 F.2d 1333, 1337 (2d Cir. 1973).

Title VII proscribes standardized testing devices which, however neutral on their face, operate to exclude non-whites capable of performing effectively in the desired positions. McDonnell Douglas Corp. v. Green, 411 U.S. 792,

806 (1973). As the Second Circuit noted in United States v.

Wood, Wire & Metal Lathers International Union, 471 F.2d 408, 414, n. 11 (2d Cir.), cert. denied, 412 U.S. 939 (1973),

"statistics may establish a prima facie case of discrimination"

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in violation of Title VII. The court finds that plaintiffs'

statistical analysis described above establishes such a case,

and thereby shifts to defendants the burden of justifying

their use of the discriminatory testing device. See Chance

v. Board of Examiners, 458 F.2d 1167, 1175 (2d Cir. 1972):

Since the touchstone in justifying a discriminatory practice

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is business necessity, defendants' burden is to prove by

professionally acceptable methods that the Local #28 apprentice

entrance exam is significantly related to job performance.

Albemarle Paper Co. v. Moody, 43 U.S.L.W. 4880 (1975); Griggs

v. Duke Power Co., 401 U.S. at 431.

To sustain that burden JAC called Dr. Gottesman.



who testified as to three validation studies which he had performed on the JAC battery. A validation study is one made to determine if a test can with significant accuracy predict an individual's performance on the job. According to Dr. Gottesman, validity studies are of three kinds: A "construct validity" study establishes whether or not the exam determines the degree to which applicants possess characteristics important to job performance. A "content validity" study establishes whether or not the exam contents closely duplicate the actual duties to be performed on the job. Lastly, a "predictive validity" study establishes whether or not exam scores correlate with external variables considered to provide a direct measure of job performance. See American Psychological Association, Standards for Educational and Psychological Tests at 25-31 (1974). Of the three methods, the predictive validity study is considered best. Bridgeport Guardians, 482 F.2d at 1337; United States v. Local 638, Enterprise Ass'n, 360 F. Supp. 979, 992 (S.D.N.Y. 1973), modified 501 F.2d 622 (2d Cir. 1974).

The first study performed by Dr. Gottesman fits within none of the three categories described above. At best it may be described as an "indirect validity study." It consist of no more than a comparison of the JAC battery to pre-validated aptitude tests of the same name and supposed subject matter in the United States Employment Service's General Aptitude Test Battery. Such a comparison

shows nothing with respect to the JAC battery as a whole. Furthermore, it is predicated on the precarious assumption<sup>14</sup> that aptitude tests with the same name are equivalent.

Dr. Gottesman's conclusion that the two sets of tests are "essentially identical" and therefore equally valid accordingly carries little, if any, probative force.

Dr. Gottesman's second study examined predictive validity. Although it also shows nothing with respect to the JAC battery as a whole, it indicates the separate predicative validity of each of the five tests. This study was made possible by the fact that JAC admitted to the apprentice program all of the applicants who took the April 1969 entrance examination (the April 1969 group) regardless of rank. As part of the validation study, when those in the April 1969 group were completing their four-year apprenticeships they were examined as to job performance on a practical test ("hands-on") and a written test ("trade-information"). All parties agree that of the two tests, the hands-on sample, created by the apprentice program's coordinator of training, Robert Schluter, is the more direct measure of job performance. Plaintiffs, however, question the adequacy of that test as a scientific criterion of sheet metal success. See note 16 infra.

In comparing the apprentices' performance on the hands-on sample to their performance on each component of the JAC battery, Dr. Gottesman was able to determine the



correlation between job performance and each aptitude test.

He concluded that:

unfortunately, by reason of acceleration, natural attrition and other factors, the graduating apprentice class in June, 1973, did not contain a sufficient number of either Blacks (N=8) or Spanish-surnamed Americans (N=5) to represent statistically meaningful subgroups. Hence, no case can be made either for or against the existence of any differential validity. That is, the data does not support or negate any contention that the test predictors operate differently for minorities than for whites.

Ex. W. at 1-2 (emphasis added). His findings, however, show little evidence of validity for either whites or minorities, and largely support the expert opinion of Dr. Katzell that the apprentice entrance exam adversely affects non-white applicants. Dr. Gottesman's findings, in brief, are that for the April 1969-group as a whole, only one of the five tests in the JAC battery, the mechanical comprehension test, was highly and significantly correlated to the "hands-on" sample. That test, moreover, was the only one in which non-whites scored as well as or better than whites. The math computations and concepts test correlated to a lesser degree, but the other three tests had no significant correlation at all. More importantly, for the non-white applicant group viewed alone, none of the five tests were significantly correlated to the hands-on sample.

Because this study produced only meagre evidence of validity, Dr. Gottesman recommended that JAC alter the

apprentice entrance exam. He suggested the elimination of four out of five of the battery tests, leaving only the test on mechanical comprehension, and the addition of a basic arithmetic and a "read and follow directions" test. No action has been taken by JAC on his recommendations.

Dr. Gottesman's third validity study attempted to determine the predictive validity of the JAC battery as a whole. He compared the total weighted raw scores of applicants tested in April 1969 with their May, 1973 combined trade-information and hands-on scores in order to determine whether a significant predictive correlation existed between the JAC battery and the criteria used to determine performance level. The correlation coefficient he found was one of .25, which Dr. Katzell later demonstrated to be marginal, i.e.: "a weak depiction of relationship between the test on the one hand [and] what you are trying to predict by means of the test on the other." (Tr. 585).

The court has been unable to follow Dr. Gottesman's calculations in arriving at the .25 figure because the data on which it is based have not been made part of the record. From the data available to the court, however, it appears that this study, like the previous predictive one, is seriously incomplete in that it fails to take into consideration forty-two apprentices in the April 1969 group. Those apprentices were not tested as to job performance because they graduated early from the apprentice program. The significance of this



omission to the two validity studies premised on relative exam performance becomes apparent when one considers that approximately half of those who graduated early ranked in the bottom half of entrance exam scores. Thus they are evidence that persons who score poorly on the test battery can perform successfully as apprentices and journeymen. All of these apprentices readily could have been made available by the defendants for testing, as they had all been inducted, upon graduation, into membership in Local 28.<sup>16</sup>

In summary, then, the testimony produced by defendants as to the job-relatedness of the apprentice entrance exam is spotty and largely equivocal. Their validation studies have failed to demonstrate that the JAC battery as a whole is significantly job-related, or indeed, that any of its component parts other than the section on mechanical-- comprehension is capable of identifying and testing for characteristics necessary to adequate sheet metal performance. Defendants, therefore, have failed to sustain their burden of proving "that the disproportionate impact was simply the result of a proper test demonstrating less ability of blacks and Hispanics to perform the job satisfactorily." Vulcan -- Society v. Civil Service Comm'n, 490 F.2d 387, 392 (2d Cir. 1973). Further use of the JAC battery will therefore be enjoined.

B. The Requirement of a High School or Equivalency Diploma

Until institution of the Corrected Fifth Draft, applicants were not excluded from the apprentice program

for failure to attain a minimum educational level. Indeed, it is unclear to the court even after three weeks of trial testimony and the filing of post-trial memoranda, why the new requirement of a high school diploma was added other than to upgrade in general the median educational achievement level of Local 28. Neither JAC nor Local 28 produced evidence of a relationship between success as a sheet metal apprentice and completion of high school.

Plaintiffs' witness, Mrs. Roxee Jolly, a high school superintendent and a former mathematics teacher in the New York City school system, reviewed on the witness stand most of the math examinations used in the apprentice program. She described the areas of skill tested in those exams as: decimals, fractions, trigonometry, basic arithmetic, basic arithmetic as to linear measurements, solid geometry and elementary algebra. She noted that students of average academic achievement in the New York City school system are taught those skills in grades four through nine, and defendants in no way rebutted her testimony. They merely emphasized on cross-examination what is a matter of common knowledge - that some students have difficulty learning those skills and must continue to study them in later grades, and that some students never learn them at all. Apprentice program coordinator Robert Schluter furthermore testified that at least in so far as trigonometry is concerned, apprentices are not expected to enter the program with



training in it; they are taught all the trigonometry needed to perform as sheet metal workers during their course of study. Thus, although the evidence indicates that knowledge of certain mathematical concepts is essential to adequate performance as an apprentice on written and practical examinations, defendants failed to demonstrate any nexus between that knowledge and a high school diploma.

It is a fact of which the court takes judicial notice that non-white persons obtain high school diplomas at a lower rate than do whites. Publications of the Bureau of the Census, for example, show that the median schooling possessed by all males, age 25 or older, in the New York City Standard Metropolitan Statistical Area is 12.1 years, while that possessed by Black males of the same age group and residence is 10.9 years, and that of Puerto Rican males of the same age group and residence, 8.3 years. 1970 Census of Population General Social and Economic Characteristics, New York, Tables 83, 91, 97. According to the EEOC Guidelines, a specific educational requirement such as a high school diploma is a "test" which must be validated like any other if it adversely affects persons protected by Title VII of the 1964 Civil Rights Act. 29 C.F.R. §§ 1607.2, 1607.3. While the Guidelines are not binding on the courts, they are entitled to great deference. Griggs v. Duke Power Co., 401 U.S. at 434.

In view of the fact that high school diplomas have

never been required as a condition of attaining journeyman status in the union and that they have only recently been required for entry to the apprentice program, defendants' failure to produce any evidence tending to validate that requirement becomes all the more significant.

History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas or degrees. Diplomas and tests are useful servants, but Congress has mandated the common sense proposition that they are not to become masters of reality.

Griggs v. Duke Power Co., 401 U.S. at 443. This is

not to say that no minimum level of education could or should be required as job-related in the sheet metal industry.

Defendants, however, have simply not produced convincing evidence that for Local 28's apprentice program the line

should be drawn at twelve years. Cf. United States v. Sheet Metal Workers, Local No. 10, 6 E.P.D. ¶ 8715 (D.N.J. 1973).

Further requirement of a high school or equivalency diploma for entrance to the Local 28 apprentice program will therefore be enjoined.

C. The Application Form - Inquiry as to Arrest Record

Two types of application forms have been used by JAC for the apprentice program since 1965. Both contain a section which reads as follows:

POLICE RECORD: List below, giving all detailed information, any police record that you have. List each arrest. It is not necessary to list minor traffic



violations. This information must be accurate and complete. Any information which is withheld will be cause for immediate dismissal from the Apprentice Program. If none, say "none."

Name and Address of Police Station or Court	Date	Offense	Outcome

It is evident that this section is intended to encompass both convictions and arrests. Plaintiffs object, however, only to the inquiry about arrests. Although they introduced evidence of five instances since 1965 in which JAC rejected applicants because of information contained in the Police Record section of their applications, the evidence is more remarkable for its paucity than for its probative weight; it is apparently unknown whether those five applicants were rejected because of conviction records or because of arrest records.

Plaintiffs also introduced into evidence two tables from Crime in the United States, Uniform Crime Report 1973 issued by Clarence M. Kelly as Director of the FBI, which indicate that non-whites are arrested both nation-wide and city-wide proportionately more often than whites. From this they argue that the presence of the Police Record section on the application form adversely affects non-whites, and therefore imposes a burden on the defendants to validate the arrest inquiry as job-related. The burden, however, cannot be shifted quite so easily;

plaintiffs have not established a prima facie case that JAC has a policy of rejecting applicants who have suffered arrest without conviction, or even that JAC has rejected such applicants in the past. Cf. Gregory v. Litton Systems, Inc., 316 F. Supp. 401, 402 (C. D. Cal. 1970); aff'd in relevant part, 472 F.2d 631 (9th Cir. 1972). On the evidence presented, therefore, this court cannot determine that the apprentice program application form discriminates in practice against non-whites. Accord, Green v. Missouri Pacific R.R.Co., 381 F. Supp. 992, 996 (E.D.Mo. 1974).

DISCRIMINATION IN DIRECT  
ADMISSION TO LOCAL 28

Non-whites presently are, as they have been in the past, conspicuously absent from Local 28. Although qualified non-white sheet metal workers exist in large percentages in other construction locals within the New York metropolitan area, in particular Local Union 400 (Blowpipe Division) of the Sheetmetal Workers International Association, their rate of pay is substantially lower than that received by the Local 28 membership.<sup>18</sup> Defendants would explain this grouping of non-whites in the lower-paying union by arguing that the work performed by Local 28 is more complex and therefore requires a more skilled and adroit membership.



Plaintiffs, however, presented convincing evidence at trial, from members and contractors of both locals, that the skills and tools required to perform Local 400 work are largely the same as those required of Local 28 jobs. Although the trade jurisdiction of the two unions are separate and discreet,<sup>19</sup> they overlap to a significant degree. It is not unusual, for example, for members of Local 28 to perform blowpipe work.<sup>20</sup> Likewise, members of Local 400 are authorized by their collective bargaining agreement to perform up to 75 feet of the square duct work usually considered within Local 28's jurisdiction.

The Local 400 apprentice program, furthermore, is modeled after that of Local 28. Testimony of Thomas Carlough, a member of Local 28 who instituted and now coordinates Local 400's course of apprentice training, indicates that students in both programs are taught the same sheet metal skills. Thus, although a Local 28 member might be more adept at square duct work, or faster because of his daily familiarity with it, members of Local 400 are certainly equipped to, and can,<sup>21</sup> perform the same work. The fact that Local 28 has initiated numerous complaints against Local 400 for infringement of its trade jurisdiction only corroborates this conclusion.

Why, then, is it that non-white sheet metal workers are not evenly distributed throughout the industry? Plaintiffs have argued, and the court finds that Local 28 has denied qualified non-whites direct access to membership

in the union while granting such access to white persons by:  
(a) failing to administer yearly journeyman tests, and using as journeyman tests examinations not validated by EEOC Guidelines; (b) selectively organizing non-union sheet metal shops with few, if any, non-white employees, and/or admitting from those shops only white employees; and (c) accepting as transfer members whites from affiliated sister locals while refusing transfers of non-whites.

A. The Journeyman Tests

It is a matter of common knowledge that at least between 1967 and 1972 the urban areas of the United States experienced a construction boom. Yet since 1959, Local 28 has administered only two journeyman examinations. Both of these exams came about as a result of arbitration proceedings brought by the Contractors' Association to force the union to increase its manpower. In 1968 when ordered by Arbitrator Theodore Kheel to admit 100 new journeymen, Local 28 designed and administered a journeyman test which, admittedly, has never been validated in accordance with EEOC Guidelines. Of 330 individuals tested on the first, written portion of the exam, only thirty-four passed, and were allowed to proceed to the practical portion. Ten failed the practical portion, with the result that twenty-four journeymen, all white, were admitted to the union. The above statistics would seem to indicate that the test served more as an obstacle to, than a vehicle for, the admission of new



journeymen. Indeed, one of the candidates for admission, then a fourth-year apprentice in Local 400, testified that "the test was pretty far out. In other words, you had to have more or less a college degree to really do anything on that test." (Tr. 1543).

Although Local 28 may have only intended to limit the number of new journeymen (white or non-white) admitted by way of the 1968 exam, the effect of that exam was to exclude non-whites. Robert Schluter, chairman of the local's examining board, testified that by visual observation 15% of those taking the exam were Black; he could not estimate the number of Hispanics. Even assuming that no Hispanics were tested, the exam clearly had an adverse impact on non-whites, and as such, without validation, was violative of Title VII. See Griggs v. Duke Power Co., 401 U.S. at 430.

In 1969, following another arbitration order, Local 28 administered a second journeyman test. According to Chairman Schluter the exam had been restructured since 1968 so as to eliminate questions involving mathematical concepts unrelated to sheet metal work, and replace them with questions of "shop math." As a result, 14 non-whites and 61 whites successfully passed the journeyman test and were admitted to the union. Because of Local 28's failure to keep records as to the numbers of whites and non-whites tested it is not possible to determine whether this exam also had an adverse impact on non-whites. In 1969 as in 1968 the exam had been

advertised by sending a letter of notice to the New York State Employment Service, the Veterans Administration, the New York State and New York City Human Rights Offices, the Workers Defense League, members of Local 28, and Local 28 contractors. Application forms were not sent, however, as Local 28 required that these be obtained and filled out in person at union headquarters.

In 1970 Local 28 refused to administer another journeyman test. Instead, in response to pleas by the Contractors' Association for more manpower, Local 28 recalled pensioners who on doctors' certificates were able to work, and issued hundreds of ID slips to members of affiliated locals and allied construction trades. Between July 1, 1969 and July 1, 1972, Local 28 issued the following numbers of ID slips:

7/1/69	150-200
1/1/70	200-250
7/1/70	200-250
1/1/71	250-300
7/1/71	400-450
1/1/72	400-450

Only one of those receiving ID slips has been identified as non-white. In addition, despite the fact that Local 28 saw fit to request ID men from sister locals all across the country, as well as from allied New York construction unions such as plumbers, carpenters and iron-workers, it never once sought



them from Sheet Metal Local 400. Furthermore, in 1969 when a group of apprentices and journeymen from Local 400 went to Local 28's offices to request ID cards, they were informed by Union President Mell Farrell that the union was not giving out ID slips.

By using the ID slip system of temporary manpower rather than continuing to administer journeyman tests, Local 28 restricted the size of its membership and thereby enabled its membership to earn substantial payment for overtime work. This had the illegal effect, if not the intention, of denying non-whites access to employment opportunities in the industry.

Cf. United States v. Local 638, Enterprise Ass'n, 347

F. Supp. at 181; accord United States v. Local

No. 357, et al., 356 F. Supp. 104, 116 (D. Neb. 1973). Union

President Farrell in 1971 at a Joint Adjustment Board grievance proceeding initiated by the Contractors Association justified the refusal to enlarge union membership by remarking that

"overtime is expected in the Construction Industry" (Ex. 111

at 2). Self-serving expectations, however, do not constitute

business necessity within the meaning of Title VII. Cf.

United States v. Local 638, Enterprise Ass'n, 501 U.S. at 633.

#### B. Organization of Non-Union Shops

Prior to 1973 no non-white ever became a member of Local 28 through the organization of a non-union shop. The explanation for this proffered by the union is that they

have never been aware of any non-union sheet metal shops owned by or employing non-whites. Such an assertion, aside from testing the credulity of the court, is clearly contradicted by the testimony of record. For example, Edward Carlough, former president of Local 28, testified by deposition that he had been aware of non-union shops employing non-white sheet metal workers as early as the 1940s. In addition, Rupert Jonas, a Black sheet metal worker in Local 295 of the Operating Engineers, testified that in 1971 Local 28 organized the Integrity Air Conditioning shop in which he worked with ten other non-whites.

Since 1973 non-whites have only gained membership in Local 28 through organization of shops because the parties to this litigation during settlement negotiations entered into an agreement whereby the union was to embark on an organizing campaign. Pursuant to that agreement Local 28 organized six shops in 1973 and 1974, and thereby admitted three non-whites to membership.

A large percentage of the shops with non-white workers which Local 28 had the opportunity but chose not to organize were blowpipe companies. In the late 1950's and early 1960's the Sheet Metal Workers' International Association urged Local 28 to organize the blowpipe industry in the metropolitan region. The industry at that time consisted of approximately 265-365 workers, 60 to 75% of whom were non-whites. Local 28 refused to organize them



despite insistent pressure from the International Association<sup>23</sup> as well as from the Contractor's Association. Its official reason was that the blowpipe contractors could not meet Local 28's pay scale, and the union could not under its collective bargaining agreement accept a wage differential<sup>24</sup> for its members. The unofficial reason, however, appears to be that Local 28 did not wish to admit as members the non-white blowpipe workers.

Seymour Zwerling, the principal of several contracting companies in signed agreement with Local 28, testified that it was a matter of "common knowlege in the industry" that the union did not want to organize the blowpipe workers because many of them were minorities. (Tr. 1145). Indeed, there appears to be no other reason for the union's refusal. In organizing an entire industry it would not have been able, as with individual shops, to admit only white workers and exclude non-white employees. In any case, whatever the reason, the effect of Local 28's refusal was the denial to non-whites of employment opportunities granted whites. "Congress directed the thrust of the [Civil Rights] Act to the consequences of employment practices, not simply to the motivation." Griggs v. Duke Power Co., 401 U.S. at 32. As a result of the union's refusal the International Association organized blowpipe workers on its own, forming them into a special building trades division of Local 400.

### C. Transfers

Section 9(k) of Article 16 of the Sheet Metal Workers' International Association Constitution and Ritual provides:

Any member who has established a record of continuous good standing of five (5) years or more to and including date of issuance of transfer card shall be admitted by transfer card into any local union of this Association in accordance with the requirements of this Constitution, and without payment of any difference in initiation fee.

(emphasis added). Such a provision has existed in the Constitution since at least 1946. During the period from 1967 through 1972, Local 28 accepted fifty-seven transfers from sister locals. All of those accepted were white. Indeed, between May 1940 and February 1973, Local 28 accepted 153 transfers, all of whom were white. Only after commencement of this litigation did the union, in 1973, accept its first non-white transfers, two journeymen from Local 400.

The homogeneity of the transfer group, however, is not the only evidence of Local 28's purposeful discrimination against non-whites. Henry Woods, a Black member of Local 28 who gained admission to the union through the 1969 journeyman test, stated at trial that he and several other blowpipe workers from Local 400 inquired about transfer of Local 28 President Farrell. Farrell told them that transfer was impossible since they were not members of a building trades union like 28. (Tr. 1641.) Given his familiarity with the



organization of the blowpipe industry, Farrell indubitably knew that his statement was false. Furthermore, only nine months previously, four white blowpipe workers from Local 400 had been allowed to transfer into Local 28.

At trial present union officials testified that they had no records of, and could recall no non-whites ever requesting transfer into Local 28. However, traditionally all requests for transfer are formally made in person before the union's Executive Board. Non-whites, who were discouraged when they inquired informally as to transfer, were simply never given the opportunity to appear before the Board.

Even had they been permitted to do so, however, Local 28 policy would have prevented their transfer. Union Recording Secretary Edward O'Reilly testified that for at least the past ten years, Local 28 has refused to accept transfers of all but former members, a policy in direct contravention of the International Association Constitution and Ritual.

This "members only" policy went into effect in the early 1960's when Local 28 was almost exclusively all white. It therefore effectively foreclosed transfer into Local 28 by non-whites. Although the International Association has on an occasional appeal overruled Local 28 and ordered it to accept a qualified transfer worker, this has never resulted in the admission of a non-white journeyman. The existence of an appeal procedure clearly cannot be viewed as justifying or in any way ameliorating the union's practice of denying to

qualified non-whites the equal access to employment opportunities guaranteed them by the Civil Rights Act.

### CONCLUSIONS

1. Local 28 is a union and labor organization within the meaning of § 701(d), Title VII of the 1964 Civil Rights Act and § B1-2.3, Title B of the New York City Administrative Code, and is engaged in an industry affecting commerce.

2. JAC is a joint labor-management apprenticeship committee within the meaning of § 701(d), Title VII of the 1964 Civil Rights Act and § B1-2.3, Title B of the New York City Administrative Code, and is engaged in an industry affecting commerce.

3. Prior to the effective dates of Title VII and Title B, and continuing to the present, Local 28 has maintained clearly discernable discriminatory practices in recruitment, selection, training and admission to membership of non-white workers. As a result of this history of discrimination Local 28 has had a well-deserved reputation in non-white communities of discriminating in recruitment, selection training and admission. This reputation operated and still operates to discourage non-whites from seeking membership in the local union or its apprentice program, in violation of Title VII and Title B.



4. Prior to the effective dates of Title VII and Title B, JAC and Local 28 maintained standards and practices in selection of apprentices for admission to the Local 28 apprentice program which discriminated against non-whites. JAC and Local 28 have a clearly deserved reputation in non-white communities of discriminating in the administration of the Local 28 apprentice program. This reputation operated and still operates to discourage non-whites from seeking to enter the apprentice program in violation of Title VII and Title B.

5. Subsequent to the effective dates of Title VII and Title B, JAC and Local 28 adopted selection procedures and standards for admission to the Local 28 apprentice program, some of which are not demonstrably job-related. They operate individually and in combination to prevent non-whites from enjoying equal access to the program in violation of Title VII and Title B.

6. Local 28 and JAC, by virtue of the above-described discriminatory practices, have illegally denied non-whites access to lucrative employment opportunities in the sheet metal industry equal to that enjoyed by whites, and have thereby maintained Local 28 as a white "A" local to the Blowpipe Division's racially mixed "B" local.

7. In order to remedy the effects of the above-described discrimination, Local 28 and JAC have been, and are under an obligation to take affirmative action to recruit,

select, train, admit to the apprentice program and admit to membership in the local union substantial numbers of non-whites.

#### RELIEF

In determining what relief could most appropriately remedy the on-going effects of defendants' discrimination, it is a relevant inquiry whether each defendant has "voluntarily 'cleaned house' or taken any meaningful steps to eradicate the effects of its past discrimination." Rios v. Enterprise Ass'n, 501 F.2d 622, 631-632 (2d Cir. 1974). The record in both state and federal court against these defendants is replete with instances of their bad faith attempts to prevent or delay affirmative action. After Justice Markowitz ordered implementation of the Corrected Fifth Draft, with the intent and hope that it would create "a truly nondiscriminatory union,"<sup>25</sup> Local 28 flaunted the court's mandate by expending union funds to subsidize special training sessions designed to give union members' friends and relatives a competitive edge in taking the JAC battery. JAC obtained an exemption from state affirmative action regulations directed towards the administration of apprenticeship programs on the ground that its program was operating pursuant to court order; yet Justice Markowitz had specifically provided that all such subsequent regulations, to the extent not inconsistent with his order, were to be incorporated therein and applied to



JAC's program. More recently, the defendants unilaterally suspended court-ordered time tables for admission of forty non-whites to the apprentice program pending trial of this action, only completing the admission process under threat of contempt citations.

"Once a violation of Title VII is established the district court possesses broad power as a court of equity to remedy the vestiges of past discriminatory practices." Rios v. Enterprise Ass'n, 501 F.2d at 629. In light of Local 28's and JAC's failure to "clean house" this court concludes that the imposition of a remedial racial goal in conjunction with an admission preference in favor of non-whites is essential to place the defendants in a position of compliance with the 1964 Civil Rights Act. The use of such measures to compel compliance with the letter and spirit of civil rights legislation is well-recognized. See Patterson v. Newspaper and Mail Deliverers' Union, Docket # 74-2548, 2d Cir. March 20, 1975; Rios v. Enterprise Ass'n, supra and cases cited at 629; United States v. Wood Wire & Metal Lathers International, supra.

The purpose of setting a remedial goal is to place eligible non-whites in the position they would have enjoyed had there been no discrimination. To do so here the court must determine what percentage of union and apprentice program members would today be non-white had the defendants not engaged in discriminatory practices. The best available

measure of that percentage is the percentage of non-whites in the relevant labor force existing today within New York City. Although there is some danger inherent in assuming the equivalence of these percentages, the court does so in an effort to "do the best it can" with the information available to it. Rios v. Enterprise Ass'n, 501 F.2d at 632.

The relevant labor force in this case consists of an aggregate of three groups: males, eighteen years of age and older<sup>26</sup> with zero to eight years of education, males eighteen years of age and older with nine to twelve years of education, and males eighteen years of age and older with more than twelve years of education.<sup>27</sup> Since the only available labor force statistics come from the 1970 Census conducted by the Department of Commerce the court, to be as accurate as possible, should look to males who at the time of the census were thirteen years or older (i.e.: now eighteen years of age or older). Unfortunately, census figures speak of males sixteen years and older rather than males eighteen years and older. Thus to the extent that thirteen, fourteen and fifteen-year old males are excluded from our calculations, the total labor force figure arrived at is low.

The census figures, furthermore, while they reflect relevant data on total population, Black population, Spanish language population and Puerto Rican population, fail to isolate a Spanish sur-named group. The court therefore has used census statistics



on Spanish language persons. For these reasons, and others of similar nature, absolute precision in the calculation of a percentage goal is impossible. However, using figures provided by the Bureau of the Census to the best advantage, and adjusting for the fact that a percentage of Spanish language males are Black,<sup>29</sup> the court has determined that approximately 29% of the relevant labor force in New York City is non-white. See Appendix for an explanation of the court's method of determining percentage goal.

The court accordingly orders that by July 1, 1981, the combined union and apprentice program membership achieve a non-white percentage of 29%.<sup>30</sup> The recruitment, testing and admission procedure for arriving at that goal is to be agreed upon and developed by the parties, under the guidance of a court-appointed administrator, within the next two months. The court specifically requires, however, that the following be included as part of such procedure:

- The union is to administer a non-discriminatory hands-on journeyman's test, professionally developed and validated in accordance with EEOC Guidelines, at least once a year; the first such test is to be given in or before September 1975.
- JAC is to administer a yearly apprentice entrance exam consisting solely of the mechanical comprehension aptitude test validated by Dr. Gottesman and a "read and follow directions" test to be developed professionally and validated in accordance with EEOC Guidelines; the first such test is to be given in or before December 1975.
- The union is to replace one of its present

JAC trustees with a non-white.

- Both Local 28 and JAC, in conjunction with the Administrator, are to develop recruitment practices specifically designed to dispel their reputation for discrimination in non-white communities and to guard against the recurrence of such reputation.<sup>31</sup>
- Both Local 28 and JAC are to maintain separate lists of whites and non-whites who (a) apply to take the apprentice entrance exam and/or the journeyman's test; (b) take the apprentice entrance exam and/or journeyman's test; (c) pass the apprentice entrance exam and/or journeyman's test; (d) seek to transfer into Local 28 from a sister local; and (e) inquire about the possibility of transferring into Local 28.

The administrator named by the court is also requested to develop with the parties a plan aimed at protecting non-whites admitted into union and apprentice membership from bearing a disproportionate burden of the unemployment caused by current depressed conditions in the construction industry.

In light of the recent Supreme Court decision in Albemarle Paper Co. v. Moody, supra, this court is constrained to determine whether an award of back pay here pursuant to 42 U.S.C. § 2000e-5(g) is necessary and appropriate. In Albemarle the Court held that "given a finding of unlawful discrimination, backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of . . . [Title VII] . . . ." Those purposes are "to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of . . . [whites] . . ." over others, Griggs v. Duke Power Co.,



401 U.S. at 429-30, and to make whole those persons who suffered injury on account of such unlawful discrimination. As the Court noted in Albermarle Paper Co., supra at 4884, backpay has an obvious connection with these purposes:

It is the reasonably certain prospect of a backpay award that 'provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices . . . '.

Plaintiffs in this case did not specifically request backpay in their complaints, and did not during trial attempt to define proposed classes of persons entitled thereto. However, they did include in their proposed post-trial findings the following paragraph:

As a result of the above-described discrimination, non-whites have suffered financial loss and are, therefore, entitled to receive backpay in amounts to be determined subsequent to the trial of this action.

The tardiness with which plaintiffs assert their demand for backpay does not preclude the court from awarding it where entitled, Rule 54(c) Fed. R. Civ. P., and in this case, does not prejudice the defendants, who have long been on notice of the discriminatory practices which are alleged as the basis for backpay relief. The difficulty with plaintiffs' proposal, however, is that no complete records exist of persons who would be entitled under it to an award of backpay. Although the court hesitates to limit relief on this ground, thus in effect rewarding defendants for their failure to keep adequate records as required by the EEOC Guidelines, the

alternative is clearly unacceptable. Any award of damages to those for whom records do not exist would at best be hypothetical.

The court therefore concludes that backpay should be awarded

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by Local 28 only to non-white persons

a) for whom there exist records of application for direct entry into the union, either through the journeyman's exam or through transfer procedures;

b) who demonstrate before the administrator, in light of this court's conclusions of law on the merits, that they were discriminatorily excluded from union membership; 33  
and

c) who show monetary damages suffered as a result thereof.

This class of persons is undoubtedly small. There is no risk, therefore, that it will inequitably drain the financial resources of the non-profit defendant association.

Damages suffered by persons denied entrance to the apprentice program and by blowpipe workers organized as part of Local 400 rather than as part of Local 28, are too highly speculative to merit backpay awards in this case. Likewise the award of damages to that class of non-whites who would have applied for direct admission to membership had Local 28's reputation for discrimination been less pervasive will also be denied as unascertainable.

Those non-whites who are entitled to backpay awards must file a claim with the administrator on or before January 15, 1976. They may recover proven damages from the date the  
34  
discrimination occurred to the date of filing of this decision



on the merits, or to the date of union admission, whichever is earlier. Damages shall be computed on the basis of the average monthly wage earned in each calendar year by members of Local 28, and shall of course be adjusted to reflect other employment income or public assistance received by claimants. See 42 U.S.C. § 2000e-5(g); Memorandum Decision of Judge Bonsal, Rios v. Enterprise Ass'n, 71 Civ. 847, 71 Civ. 2877, S.D.N.Y., June 27, 1975. Payment is to be made after determination by the administrator of all claims, and their discretionary review, if necessary, by this court.

The foregoing constitute the court's findings of fact and conclusions of law. The parties and the administrator are ordered to submit an agreed upon recruitment, testing and admission procedure within 60 days of the filing of this decision. The court will maintain continuing jurisdiction over the parties to this action for purposes of ensuring implementation of appropriate relief.

SO ORDERED.

Dated: New York, New York

July 18, 1975

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U. S. D. J.

NOTES

1. For purposes of this case the parties have agreed that the term "non-whites" includes black and Spanish surnamed individuals. Pre-trial Order, p.3.
2. The reported decisions of those actions which have proceeded to trial can be found at 347 F. Supp. 169 (S.D.N.Y. 1972) (Local 40 of the structural iron workers), and 360 F. Supp. 979 (S.D.N.Y. 1973) (Local 638 of the steamfitters), modified 501 F.2d 622 (2d Cir. 1974); on remand; unreported decision of Judge Bonsal dated May 5, 1975.
3. Intervention was sought during the pendency of an administrative proceeding for racial discrimination initiated by the City Commission on Human Rights against Local 28 for violation of Title B, Chapter I, of the New York City Administrative Code (City Human Rights Law). See 347 F. Supp. at 166.
4. The Commission on Human Rights had found, after conducting administrative hearings, that the defendants discriminated against Negroes in the designation and approval of applicants for the Local 28 apprentice program. The Honorable Jacob Markowitz of the New York Supreme Court adopted all of the Commission's findings as to JAC and ordered implemented new standards for the admission of apprentices.
5. Sheet metal workers fabricate and install ducts for ventilating, air-conditioning and heating systems.  
"In heating and air-conditioning duct work, sheet metal workers plan the job to determine the size and type of metal needed before cutting it with hand snips, power-driven shears, and other tools. They shape the metal with machines, hammers, and anvils, then weld, bolt, rivet, solder, or cement the seams and joints . . . . To install ducts, components are fitted together, hangers and braces installed for support, and joints connected and soldered or welded. Some sheet metal workers specialize in shopwork or on-site installation, others do both." Occupational Outlook Handbook, 1974-75 Edition, published by the United States Department of Labor, at 279. This description appears accurate in



light of testimony at trial as to the nature of work performed by members of Local 28.

6. "The manufacture, fabrication, assembly, erection, installation, dismantling, reconditioning, adjustment, alteration, repairing and servicing of all sheet metal work (including ferrous or non-ferrous sheet metal) of No. 10 U.S. gauge or its equivalent or lighter gauge, or any and all substitute materials used in lieu thereof (any question of jurisdiction of substitute materials used in lieu thereof in accordance with the Joint Arbitration Plan between the Building Trades Employers' Associations and the Unions of the Building Trades of the City of New York), including all shop and field sketches used in fabrication and erection (including those taken from original architectural and engineering drawings or sketches and all other work included in the jurisdictional claims of Sheet Metal Workers International Association.

"Testing and balancing of all air-handling equipment and duct work contracted for after June 30, 1969. All internal linings for casing, plenum and ducts must be lined prior to erection. Supply casings; Supply airshafts must be Sheet Metal.

"The manufacturing and erection of all sheet metal work in connection with buildings and structures as follows: hollow metal sash, frames, partitions, skylights, cornices, crestings, awnings, circular mouldings, spandrels (except stamping of same), sheet iron sheeting or roofing, package chutes, linen chutes, rubbish chutes, hoods, sheet metal fire proofing, ventilators, heating and ventilating pipes, air washers, conveyors, breeching and smoke pipes for hot water heaters, furnaces and boilers, laundry dryers and all connections to and from same, metal connections to machines in planing mills, saw mills and other factories (whether it be used for ventilating, heating or other purposes), sheet metal connections to and from fans, sepercators, sheet metal cyclones for shavings or other refuse in connection with various factories, sheet metal work in connection with or fastened to store fronts or windows, sheet metal work in connection with concrete construction and sheet metal columns and casings, covering all drain boards, lining of coil boxes, ice boxes and other sheet metal work in connection with bar furniture and soda fountains.

"Spot welding, electric arc welding, oxyacetylene cutting and welding in connection with sheet metal work of No. 10 gauge or lighter covered by the collective bargaining agreement also; sheet metal work in connection with plain and corrugated fire doors of No. 10 gauge or lighter; also the erection of floor domes, the setting of registers and register faces in connection with sheet metal work, the cutting and bending of metal necessary for application and erection of metal ceilings and side walls (except stamping), the applying of metal to ceiling and side walls and the furring and sheathing of same. The assembling and erection of fans and blowers; also the erection of metal furniture, factory bins, shelving and lockers, corrugated iron on roofs and sidings, all metal shingles and metal slate, and tile, plain or covered with a foreign substance, the manufacture and erection of corrugated wire glass and accessories; the glazing of metal skylights. The installation of unit vents where there is sheet metal work in connection with the supply and discharge of air; the setting of radiator enclosures of sheet metal where it does not support the radiator.

"In the manufacturing of drawn metal work; the work of journeyman sheet metal workers shall be the cutting and forming of the metal before the same is applied to the wood, and all clipping and soldering that may be necessary in the finishing of the assembled parts and the covering of wood and composition door frames and sash with sheet metal. Also such other sheet metal work of No. 10 gauge or lighter, not herein specified, that has been decided by the Executive Committee of the Building Trade Employers' Association to be, or is now, in the possession of the Sheet Metal Workers' Union shall be regarded as sheet metal worker's work.

"In the Kitchen Equipment Industry it shall be understood that the term "Sheet Metal Work" shall mean all work made of sheet metal No. 10 gauge or lighter including the making, mounting, erecting, cleaning and repairing of all steel and gas ranges, grid irons and oven racks, hoods, tables and stands, warming closets, plate warmers and plate shelves, bands, doors and slides for same, drip pans, urns, and percolators, kettles, revolving covers, meat dishes and covers, steam and carving tables and drainers for same, bain marie boxes and potato mashers and any other items or types of work that may be included in Article I, Section 5 of the Constitution and Ritual of the International Association.



"In the temporary operation of fans or blowers in a new building, or in addition to an existing building, for heating and/or ventilation, and/or air conditioning, the temporary operation and/or maintenance of such fans or blowers."

Description of Local 28's work jurisdiction, Stipulation of Facts, ¶ A(5).

7. It also refused to work with the City and Federal government in negotiating an alternative, tailor-made affirmative action plan.
8. The current Collective Bargaining Agreement provides in Rule XVII that if 300 Local 28 journeymen are unemployed, the industry shifts to a six hour day. When the six hour day is in effect, apprentices receive seven hours of pay for each class session. They are paid according to the following scale:
  - 1st term - 40% of the journeyman wage rate
  - 2nd term - 45% of the journeyman wage rate
  - 3rd term - 50% of the journeyman wage rate
  - 4th term - 55% of the journeyman wage rate
  - 5th term - 60% of the journeyman wage rate
  - 6th term - 65% of the journeyman wage rate
  - 7th term - 70% of the journeyman wage rate
  - 8th term - 80% of the journeyman wage rate
9. Local 28's reputation for nepotism also prevented many non-whites who might have otherwise applied from even contacting JAC. One Black mechanic who had sought sheet metal work in New York City in the early 1960's testified that although aware of Local 28, he had not applied because he had "heard that it was a father and son thing, you had to be a relative to become a member . . . That threw me out, I didn't have any relatives." (Tr. 1592).
10. Neither Local 28 nor JAC maintained such records despite the Equal Employment Opportunity Commission Guidelines on Testing and Selecting Employees (EEOC Guidelines), which require:
  - Every employer, labor organization, and joint labor-management committee subject to Title VII which controls an apprenticeship program (regardless of any joint or individual obligation to file a report) shall, beginning August 1, 1967, maintain a list in chronological order containing the names and addresses of all persons who have applied to participate in the apprenticeship program, including the dates on which such applications were received. (See section 709(c), Title VII, Civil Rights

Act of 1964). Such list shall contain a notation of the sex of the applicant and of the applicant's identification as "Negro," "Spanish Surnamed American," "Oriental," "American Indian," or "Other."

29 C.F.R. § 1602.20(b) (1975). However, despite the lack of records, plaintiffs managed to research at least in part the race and nationality of applicants for apprenticeship. Out of 3,490 applicants between 1969 and 1972 they were able to identify 439 as non-whites. Of 446 persons who became apprentices, 43 were non-white. Thus, to the extent that plaintiffs' attempts at identification were successful, it appears that 13.43% of whites who applied became apprentices while only 8.79% of non-whites did so, resulting in a success rate for whites of 1 1/2 times that for non-whites. In Chance v. Board of Examiners, 458 F.2d 1167, 1171 (2d Cir. 1972) the court found that disparity enough to establish a prima facie case of discrimination.

11. He confined his analysis to the top half and above because with the exception of applicants tested in April 1969 (see p. 17 infra) those ranking below have never been selected by JAC for admission to the apprentice program.
12. Indeed, plaintiffs argue that the statistical disparity between the percent of union and apprentice members who are non-white (3.97%), and the percent of what they define as the "relevant labor force in New York City" that is non-white (36%), is by itself enough to establish a prima facie case of across-the-board discrimination. Defendants, of course, contest plaintiffs' definition of relevant labor force and thereby dispute plaintiffs' statistics. However, even accounting for errors and overinclusion on the part of plaintiff (see discussion infra at 39-40), the disparity between the number of non-whites available to Local 28 and JAC as a membership pool and those chosen may well be enough to establish a general prima facie case of discrimination. Cf. Vulcan Society v. Civil Service Comm'n, 360 F. Supp. 1265, 1269 (S.D.N.Y. 1973); aff'd, 490 F.2d 337 (2d Cir. 1973). Rather than rely on this possibility, however, the court has made findings as to each allegation of discriminatory practice. See United States v. Ironworkers Local 86, 443 F.2d 544, 551 (9th Cir.), cert. denied, 404 U.S. 984 (1971).
13. In United States v. Bethlehem Steel Corp., 446 F.2d 652, 662 (2d Cir. 1971) the Second Circuit adopted the following definition of the business necessity doctrine:  
When an employer or union has discriminated in the past, and when its present policies renew or exaggerate discriminatory effects,



those policies must yield, unless there is an overriding legitimate, non-racial business purpose.

The court then went on to state: "Necessity connotes an irresistible demand . . . . If the legitimate ends . . . . can be served by a reasonably available alternative system with less discriminatory effects, then the present policies may not be continued."

14. Standard F 4 of the American Psychological Association's Standards for Educational and Psychological Tests warns against making such an assumption without evidence to back it up, and rates the advice given as "essential." The EEOC Guidelines specifically rule out "assumptions of validity based on test names or descriptive labels." 29 C.F.R. § 1607.8 (1975). While the EEOC Guidelines are not binding on the courts, the Second Circuit has endorsed reliance on them "as a helpful summary of professional testing standards." Vulcan Society v. Civil Service Comm'n, 490 F.2d 387, 394 (2d Cir. 1973).
15. As plaintiffs note in their Post-Trial Memorandum: Appendix A of Exhibit W contains raw scores of . . . apprentices identified only by number. Plaintiffs were unable to do the same calculations as are contained in Dr. Gottesman's testimony because they had no way of correlating the raw scores of people identified only by numbers with the percentile scores of named individuals (with different identification numbers) which had previously been produced (P. Exh. 59, Appendices 208).
16. These last two validity studies are also suspect in that they rely upon a hands-on test as a measure of job performance, yet that test itself was prepared, contrary to the EEOC Guidelines, without benefit of a professional job analysis. 29 C.F.R. § 1607.5(b)(3) (1975). See Vulcan Society v. Civil Service Comm'n, 490 F.2d 387, at 394 n. 8. As the district court in Chance v. Board of Examiner's noted, the evaluation of a test's validity "depends upon the reliability and fairness of the field appraisal of performance on the job." 330 F. Supp. 203, 216 (S.D.N.Y. 1971), aff'd, 458 F.2d 1167 (2d Cir. 1972).
17. If the need for mathematical skills to adequately perform as an apprentice, however, is the only concern, it would seem that such skills could be better evaluated through a contemporary test of mathematical ability

than by inference of that ability drawn from completion of a given educational level. Cf. Dobbins v. Local 212, Electrical Workers, 292 F. Supp. 413, 453 (S.D. Ohio 1968).

18. Louis Commarato, president of Local 400, testified that in 1965-1966, members of his union earned approximately \$2.25 an hour compared with Local 28's \$5 an hour. As of July 1974, Local 400 men earn \$7.10 per hour while members of Local 28 receive \$12.05 per hour. Similarly, members of Local 295 of the Operating Engineers, who also perform sheet metal work, receive \$4.60 per hour.

19. The trade jurisdiction of Local 400 encompasses:

"Spray booth systems, including blowers, tanks, (duct work incidental to the system if 75 ft. or under), if over 75 ft., all duct work incidental to the system will be subcontracted to a sheet metal shop in agreement with the Sheet Metal Workers' International Association local having jurisdiction in the area in which the work is being done.

"Ovens and drying systems, including the manufacture of ovens, heaters, panels, etc., (and the duct work incidental to the system if 75 ft. or under), if over 75 ft., all duct work incidental to the system will be subcontracted to a sheet metal shop in agreement with the Sheet Metal Workers' International Association local having jurisdiction in the area in which the work is being done.

"Dust collecting systems, including the exhausts, blowers, fans, round pipe and cyclones.

"Conveyor systems; except no slide chutes or hoppers to be installed except at Building Trades rates by a sheet metal shop in agreement with a Building Trades local of the Sheet Metal Workers' International Association.

"Smoke houses.

"Plating and degreasing tanks, including the exhaust systems and round pipe work.

"Smoke stacks; breechings only when done as an accommodation while doing an installation covered in this Schedule in an existing plant.

"Retail bakery work where the duct work does not exceed 75 ft. on the exterior of the building - if over



75 ft. all duct work incidental to the system will be sub-contracted out to a sheet metal shop in agreement with the Sheet Metal Workers' International Association local having jurisdiction in the area in which the work is being done.

"Furnish and install makeup air systems in industrial plants."

20. Blowpipe work entails the creation of ducts to be used for removal of fumes, dust or indeed particles of any substance that can be conveyed by air. It usually involves fabrication and/or installation of round duct work. Local 28's sheet metal work, on the other hand, usually involves fabrication and installation of rectangular or square ducts. Blowpipe work tends to involve prefabricated or standard elbows, joints and forms whereas rectangular ducts for heating and air conditioning units must more frequently be custom made.
21. The only skill found within Local 28 which is not shared by Local 400 is that of drafting. Not all members of Local 28 are drafters, however; drafting is considered the highest specialty in the union, and requires extra training over and above that acquired in the apprentice program.
22. Local 28's asserted reason for not contacting Local 400 was its "knowledge" that members of the 400 Blowpipe Division were enjoying full employment. Yet Thomas Carlough, coordinator of the Local 400 apprentice program and himself a member of Local 28, testified that in 1970 the bankruptcy of a major blowpipe shop left many 400 sheet metal workers without jobs.
23. The Contractors' Association wanted the blowpipe workers organized so as to have access to greater manpower, and so as to eliminate competition from the blowpipe contractors. (Tr. 1127).
24. A dual wage scale, however, had for many years already existed within the union. Edward O'Reilly, Recording Secretary of Local 28, admitted that the Kalamein Workers (those union members specializing in applying sheet metal linings to doors) receive a lower rate of pay than other members of the local union. (Tr. 225).
25. State Commission on Human Rights v. Farrell, 43 Misc. 2d at 969.
26. The age requirements for admission to the Local 28 apprentice

program were not challenged by plaintiffs.

27. The three educational divisions were made in an attempt to replicate the educational mix which census figures show to exist among sheet metal workers nationwide. Those figures show that 23.98% of sheet metal workers nationwide have completed zero to eight years of education, 67.79% have completed nine to twelve years of education, and 8.22% have completed more than twelve years of education. See 1970 Census of Population, Subject Reports, Occupational Characteristics, PC(2) - 7A, Table 5.
28. Spanish language persons are defined by the Bureau of the Census as those individuals "of Spanish mother tongue and all other persons in families in which the head or wife reported Spanish as his or her mother tongue." Mother tongue is defined as the language spoken in the person's home when he or she was a child. 1970 Census of Population, General Social and Economic Characteristics, PC(1)-C34 (hereinafter "General Social and Economic Characteristics") Appendix B, at 7.
29. Approximately 11.6% of males of Spanish origin are Black. Rios v. Enterprise Ass'n, 71 Civ. 2877 and 71 Civ. 847, S.D.N.Y., May 5, 1975 at 6. Persons of Spanish origin are those who indicated to the census takers that they were of Mexican, Puerto Rican, Cuban, Central or South American, or "Other Spanish" descent. General Social and Economic Characteristics, Appendix B, at 7, 34. The parties have provided the court with no separate figures as to the percentage of Spanish language males who are Black. The Court has consequently assumed the percentage to be the same as that for males of Spanish origin.
30. The court has chosen a six year period for implementation of the 29% goal after full consideration of the depressed economic condition of the construction industry, and in the firm belief that a gradual but steady influx of non-whites will produce the most stable membership.
31. In Gresham v. Chambers, 501 F.2d 687, 691 (2d Cir. 1974) the Court of Appeals noted:  
Where a pattern of past discrimination appears, recruitment procedures that might otherwise be classified as neutral will no longer be accepted as non-discriminatory. Additional methods must then be devised to compensate for the effects of past discriminatory practices and to guard against their perpetuation or recurrence.



# APPENDIX

## The Court's Method of Calculating Percentage Goal<sup>a</sup>

1. Total number of Spanish language males 18 and over:  
To find this total the court determined the ratio of the number of Spanish language males in the population to the number of Puerto Rican males in the population, and then multiplied the number of Puerto Rican males 18 and over by that ratio.

$$\begin{array}{rcl} \text{Number of P.R.} & & \text{c} \\ \text{Males 18 and over} & \times & \frac{\text{Number of Spanish language} \\ & & \text{Males in the Population}}{\text{Number of P.R. Males in the} \\ & & \text{Population}} & \text{d} \\ & & = & \text{Total Number} \\ & & & \text{of Spanish} \\ & & & \text{Language Males} \\ & & & \text{18 and Over} \end{array}$$

2. Adjusted number of Spanish language males 18 and over:  
The court then multiplied this figure by (1 minus .116)<sup>e</sup> or .884 in order to avoid counting Blacks as Spanish language males.

$$\left[ \begin{array}{rcl} \text{Number of P.R.} & & \text{Number of Spanish language} \\ \text{Males 18 and over} & \times & \frac{\text{Males in the Population}}{\text{Number of P.R. Males in the} \\ & & \text{Population}} \end{array} \right] \times .884 = \text{Adjusted} \\ \text{Number of Spanish Language} \\ \text{Males 18 and over}$$

3. Total number of non-white males 18 and over:  
Lastly, the court added the number of Black males 18 and over to arrive at the total for non-white males 18 and over. (T)

$$\begin{array}{rcl} \text{Number of Black} & & \text{Number of P.R.} & & \text{Number of Spanish} \\ \text{Males 18 and over} & + & \text{Males 18 and} & \times & \text{Language Males in} \\ & & \text{over} & & \text{the Population} \\ & & & & \text{Number of P.R.} \\ & & & & \text{Males in the} \\ & & & & \text{Population} \end{array} \times .884 = T$$

4. Total number of non-white males 18 and over in each educational category:

For reasons explained in the opinion, supra at note 27, the court sought to identify:

- (a) the total number of non-whites 18 and over who have completed zero to eight years of education;
- (b) the total number of non-whites 18 and over who have completed nine to twelve years of education; and
- (c) the total number of non-whites 18 and over who have completed more than twelve years of education.

32. As JAC has no role in granting or denying direct admission to Local 28 it will not be held liable for backpay.
33. This of course includes a showing that claimant is qualified for admission in accordance with Local 28's entrance requirements as modified by this decision.
34. Discrimination for purposes of backpay computations will be deemed to have occurred on the date on which the next applicant for admission who does not qualify as a non-white, as defined for purposes of this case, is admitted to the union. See Rios v. Enterprise Ass'n, 71 Civ. 847, 71 Civ. 2877, S.D.N.Y., June 27, 1975 memorandum decision of Judge Bonsal.

Title VII specifically provides that "back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the commission." 42 U.S.C. § 2000e-5(g). No such time limitation is imposed here, however, because unlike the Rios class action case, this action was not initiated by the filing of a charge with the EEOC. Rather, it was begun by the Attorney General in accordance with the procedures outlined in 42 U.S.C. § 2000e-6(a).

Ruling that accrual not extend more than two years prior to the filing of the Attorney General's complaint would appear a logical analogy under the circumstances. However, in formulating the accrual limitation quoted above, the United States Senate specifically rejected a provision that would have limited backpay liability to a date two years before institution of judicial proceedings. Albermarle Paper Co., supra at 4885, n. 13. In light of this legislative history, and the small number of persons entitled to backpay in this case, the court chooses not to limit accrual of Local 28's liability.



The court therefore conducted three series of calculations using the formula for T adjusted to reflect education (T(a), T(b) and T(c)).

$$\begin{array}{l} \text{Number of Black}^f \\ \text{Males 18 and} \\ \text{over with ( )} \\ \text{education} \end{array} + \begin{array}{l} \text{Number of P.R.}^g \\ \text{Males 18 and} \\ \text{over with ( )} \\ \text{education} \end{array} \times \begin{array}{l} \text{Number of Spanish} \\ \text{Language Males in} \\ \text{the Population} \\ \text{Number of P.R.} \\ \text{Males in the} \\ \text{Population} \end{array} \times .334 = T( )$$

5. Non-white percent and percentage goal of the relevant labor force in each educational category:

To learn what percent of the relevant labor force in each category is non-white, and therefore what the non-white percentage goal for that category should be (PG), the court simply compared T( ) to the total number of all males 18 and over with ( ) education (RLF).<sup>h</sup>

$$\frac{T( )}{RLF( )} = PG$$

6. Total non-white percent and percentage goal of the relevant labor force:

The court multiplied PG(a) by 23.98%, PG(b) by 67.79% and PG(c) by 8.22%<sup>i</sup> and then added the three results to achieve the total non-white percentage goal in this case of 29%.<sup>j</sup>

APPENDIX FOOTNOTES

- a. The formula used in this appendix is substantially the same as that employed by Honorable Dudley B. Borsal in Rios v. Enterprise Ass'n, supra, 71 Civ. 2877 and 71 Civ. 847 at 7. "Important national goals would be frustrated by a regime of discretion that 'produce[d] different results for breaches of duty in situations that cannot be differentiated in policy.'" Albermarle Paper Co. v. Moody, 43 U.S.L.W. at 4884.
- b. Taken from Table 131, General Social and Economic Characteristics at 663.
- c. Census data speaks only of Spanish language population. See Table 119, General Social and Economic Characteristics at 607. The court assumes, however, that the percentage of males among that population is equivalent to the percentage of males among the Puerto Rican population, i.e.: 47.5%. See Table 129, General Social and Economic Characteristics at 659.
- d. Taken from Table 129, supra.
- e. See note 29 supra.
- f. Census figures reflect educational levels for males 25 and over. See Table 125, General Social and Economic Characteristics at 643. The court assumes that educational levels of males 18 and over would be equivalent.
- g. Taken from Table 130, General Social and Economic Characteristics at 661.
- h. RLF stands for relevant labor force. This data is readily available from the census reports. See Table 120, General Social and Economic Characteristics at 613.
- i. See note 27 supra.
- j. The court finds it unnecessary to inflate the percentage goal because of the existence of a greater census undercount for Blacks than for whites. Any advantage the defendants thereby derive is counterbalanced by the advantage plaintiffs gain through the use of the more inclusive Spanish language data as a substitute for unavailable Spanish surname data.



HENRY F. WERKER, D. J.

The following changes are to be made to the Opinion  
filed in this action on July 18, 1975:

Page 21, line 9: Mrs. Roxee Jolle should be Mrs.  
Roxee Joly;

Page 35, line 10: § B 1-2.3 should be § B 1-7.0(1)(a);

Page 37, line 13: is should be it;

Page 37, line 14: flaunted should be flouted.

SO ORDERED.

Dated: New York, New York

August 6, 1975

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U. S. D. J.

Endorsement of City's Motion  
to limit issues for trial,  
signed July 21, 1975  
(Docket entry number 17)

Omitted by Stipulation of  
Counsel for the Parties  
Copies of this document may be  
submitted at a later date.



LC:mb  
M-624

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, and THE CITY OF  
NEW YORK,

Plaintiffs,

- against -

LOCAL 638 . . .  
LOCAL 28 OF THE SHEET METAL  
WORKERS' INTERNATIONAL ASSOCIATION,  
LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE . . . SHEET METAL AND  
AIR-CONDITIONING CONTRACTORS'  
ASSOCIATION OF NEW YORK CITY, INC.,  
etc.,

Defendants.

:  
:  
:  
: ORDER AND JUDGMENT

: 71 Civ. 2877 (HTW)

-----X  
LOCAL 28,

Third-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Third-Party Defendant.

-----X  
LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE,

Fourth-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Fourth-Party Defendant.  
-----X

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
plaintiffs shall have judgment against defendants as  
follows:

A. GENERAL EQUITABLE RELIEF

1. Defendant Local 28 of the Sheet Metal Workers' International Association, its officers, agents, employees and successors and all persons in active concert or participation with them in the administration of the affairs of Local 28 ("Local 28") are permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating in recruitment, selection, training, admission to membership in Local 28, admission to membership in the Local 28 Apprentice Program (the "Apprentice Program") indenturing apprentices, referral, advancement, compensation, terms, conditions, or privileges of employment against any individual or class of individuals on the basis of race, color or national origin. Local 28 shall not exclude or expel any individual from membership in Local 28 or the Apprentice Program, or limit, segregate or classify membership in Local 28 or the Apprentice Program, or fail or refuse to refer any individual for employment with sheet metal contractors, their agents, subsidiaries or successors with whom Local 28 presently has, or shall have in the future, a collective bargaining agreement ("Local 28 contractors") on the basis of race, color or national origin, nor shall they take any other action which would deprive or tend to deprive any individual of employment opportunities with Local 28 contractors or membership in Local 28 or the Apprentice Program, or otherwise adversely affect his or her status as an employee of Local 28 contractors or member of Local 28 or the Apprentice Program, or as an applicant for employment with Local 28 contractors or membership in Local 28 or the Apprentice Program because of such individual's race, color or national origin. They shall receive and process



applications for membership in Local 28 and the Apprentice Program, admit members to Local 28 and the Apprentice Program, indenture apprentices, train, test, offer journeymen status to graduate apprentices, refer for employment, handle grievances, and otherwise administer all of the affairs of Local 28 and the Apprentice Program so as to ensure that no individual is excluded from equal work opportunities, including but not limited to overtime and advancement, on the basis of race, color or national origin.

2. Defendant Local 28 is permanently enjoined from preventing, impairing, obstructing, delaying or otherwise interfering with Defendant Sheet Metal and Air-conditioning Contractors National Association, New York City Chapter, Inc. (the "Contractors Association") and/or all Local 28 contractors from fulfilling the affirmative action obligations imposed on them or any of them by Presidential Executive Order 11246, 3 C.F.R. Chapter IV §202, and Mayoral Executive Order 71, dated April 2, 1968, 96 The City Record 2842 (April 10, 1968) and rules and regulations thereunder.

3. Except as otherwise provided in this Order and Judgment ("Order"), defendant Local 28, is permanently enjoined from denying, withholding, discouraging, obstructing or otherwise interfering with direct access by non-whites\* to membership in Local 28 by failing to administer at least once a year a journeyman's test and by using as journeyman's tests examinations not professionally developed and validated under the Equal Employment Opportunity Commission Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607 ("EEOC Guidelines").

4. Defendant Local 28 is permanently enjoined from denying, withholding, discouraging, obstructing or otherwise interfering with direct access by non-whites to

\* Hereinafter, the term "non-white" shall mean black and Spanish surnamed individuals.

membership in Local 28 or the Apprentice Program by selectively organizing non-union sheet metal shops with few, if any, non-white sheet metal employees, and/or by admitting into Local 28 or the Apprentice Program from such non-union shops only white sheet metal employees.

5. Defendant Local 28 is permanently enjoined from denying, withholding, discouraging, obstructing or otherwise interfering with direct access by non-whites to membership in Local 28 by accepting transfers of white members or apprentices of affiliated sister local unions while refusing transfers of non-white members or apprentices of affiliated sister local unions, and/or by only accepting transfers of those individuals who formerly were members and/or apprentices of Local 28.

6. Defendant Local 28 is permanently enjoined from denying, withholding, discouraging, obstructing or otherwise interfering with direct access by non-whites to membership in Local 28 by relying on, using a system of, or issuing "identification slips" or "permits" to white members and/or apprentices of affiliated sister local unions or allied construction unions.

7. Defendant Contractors Association, its officers, agents, employees, members and successors, and all persons in active concert or participation with them, are permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating in recruitment, selection, training, admission to membership in Local 28, admission to membership in the Apprentice Program,



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indenturing apprentices, referral, advancement, compensation, terms, conditions or privileges of employment against any individual or class of individuals on the basis of race, color or national origin. They shall not fail or refuse to hire for employment nor shall they fail or refuse to refer for membership, or otherwise of membership opportunities, in Local 28 or the Apprentice Program any individual on the basis of race, color or national origin, nor shall they take any other action which would deprive or tend to deprive any individual of equal employment opportunities with a Local 28 contractor or otherwise adversely affect such individuals' status as an employee of a Local 28 contractor or as a member of Local 28 or the Apprentice Program because of such individual's race, color or national origin.

8. Defendant Local 28 Joint Apprenticeship Committee, its trustees, officers, agents, employees, and successors, and all persons in active concert and participation with them in administering the affairs of the Apprentice Program ("JAC") are permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating in recruitment, selection, training, admission to membership in the Apprentice Program, indenturing apprentices, admission to membership in Local 28, referral, advancement, graduation, compensation, terms, conditions or privileges of employment against any individual or class of individuals on the basis of race, color or national origin. JAC shall receive and process applications for the Apprenticeship Program, admit, indenture, train, test, refer for employment with a Local 28 contractor, advance and graduate apprentices, and otherwise administer the Apprentice Program so as to ensure that no individual or class of individuals is excluded from equal work opportunities with a Local 28 contractor on the basis of race, color or national origin.

9. Except as specifically set forth in paragraph 21(c) infra, defendant JAC, is permanently enjoined from administering all unvalidated tests, including but not limited to the battery of tests, and all unvalidated variations thereof, set forth in the Corrected Fifth Draft of Standards For Admission of Apprentices for the Sheetmetal Industry of New York City, New York ("Corrected Fifth Draft") which is appended to the opinion and order of the Supreme Court of the State of New York, County of New York, in the case State Commission on Human Rights v. Mell Farrell, 43 Misc. 2d 958, 252 N.Y.S. 2d 649 (Sup. Ct. N.Y. City 1964).

10. Defendant JAC is permanently enjoined from requiring a high school diploma or equivalency certificate or other indicia of completion of twelfth grade as a prerequisite to taking the apprentice entrance test, or admission to the Apprentice Program.

B. REMEDIAL RACIAL GOAL

11. By July 1, 1981, Local 28 and JAC are hereby directed and ordered to achieve a non-white percentage of 29% in the combined membership of Local 28, including pensioners, and the Apprentice Program. (The pensioners to be included in this computation shall be defined in the Program.) Non whites shall be admitted to Local 28 and the Apprentice Program in such a manner as to insure that there is regular and substantial progress made every year in achieving this goal.

12. In order to achieve this non-white percentage of 29%, Local 28 and JAC are hereby directed and ordered to forthwith grant a preference in favor of non-whites for admission into Local 28 and the Apprentice Program. The terms and conditions of this admission preference shall include, but not be limited to, the provisions set forth in paragraphs 13 through 23 infra and in a program of recruitment, selection, testing, record-keeping, admission, referral



and employment (the "Program") which is to be developed by the parties herein and the Administrator who is appointed in paragraph 13 of this Order.

C. THE ADMINISTRATOR

13. DAVID A. RAFF, Esq. is hereby appointed Administrator to implement the provisions of this Order and the Program and to supervise the performance and implementation thereof. He shall immediately commence his duties. If the position of Administrator becomes vacant by virtue of the death or incapacity of the individual hereby appointed, the Court shall appoint a successor.

14. In addition to the powers and duties specified in this Order and the Program, the Administrator shall be empowered to take all actions, including but not limited to the following, as he deems necessary and proper to implement and insure the performance of the provisions of this Order and the Program:

(a) establish additional record-keeping requirements;

(b) increase the frequency with which the apprentice entrance test and/or the hands-on journeyman's test described more fully infra are administered;

(c) devise and implement additional methods and procedures for entry by non-whites into Local 28 or the Apprentice Program;

(d) establish ratios of non-whites to whites by which individuals will be admitted to Local 28 or the Apprentice Program;

(e) establish through the Program or otherwise such interim percentage goals of non-white membership in Local 28 and/or the Apprentice Program in order to insure that the 29% goal set forth in paragraph 11 supra is achieved by July 1, 1981.

(f) establish procedures and practices for work referral and employment, including but not limited to work referral and employment procedures and practices based on ratios of non-whites to whites, furloughs and/or rotation;

(g) conduct an investigation into, and/or require Local 28, and/or JAC to submit reports, concerning any aspect of the operation of Local 28 and the Apprentice Program.

(h) review and approve or object to the disposition of all applications for entry into Local 28 or the Apprentice Program. At such time, if ever, that the Administrator shall adopt and implement any of the procedures and requirements authorized in this paragraph, he shall do so in writing, and such procedures and requirements shall thereafter be deemed included in and part of the Program described infra and subject to review by the Court.

15. The Administrator shall hear and determine all complaints concerning the operation of this Order and the Program and shall decide any questions of interpretation and claims of violations of this Order and the Program, acting either on his own initiative or at the request of any party herein or any interested person. All decisions of the Administrator shall be in writing and shall be appealable to the Court.

16. Within the guidelines set forth in paragraphs 23 through 25 infra, the Administrator shall award back pay to non-whites who file a written claim with him before January 15, 1976. The Administrator is empowered to hold hearings and make such factual determinations as he deems appropriate on all such claims for back pay.

17. At the end of three months from the date of entry of this Order, and at three month intervals thereafter



up to the first anniversary, the Administrator shall submit a detailed report to the Court and the parties describing the work he has performed and the progress that has been made in working toward the percentage goal of 29% non-white membership in Local 28 and the Apprentice Program by July 1, 1981. In this report, the Administrator shall recommend such modifications, amendments or changes to this Order or the Program that he deems necessary and proper in order to meet the aforesaid percentage goal. From the first anniversary of the date of entry of this Order and thereafter until July 1, 1981, the Administrator shall submit the above described report every six months.

18. Nothing contained herein shall give the Administrator the right to amend, modify or change the substantive terms of this Order and the Program, nor shall he have any power or authority other than that granted to him in this Order and the Program.

19. The Compensation for the Administrator which shall be at a rate of \$40 per hour and such out-of-pocket expenses as approved by the Court shall be charged upon and apportioned among the defendants as the Court may direct. The Administrator shall submit at the beginning of every calendar quarter to the defendants, with a copy to the Court and counsel for the plaintiffs and the State Division of Human Rights (the "State"), a bill itemizing his compensation and the expenses that he incurred during the immediately preceeding quarter.

20. The Administrator shall remain in office for such time as the Court shall determine.

D. THE PROGRAM

21. On or before September 30, 1975, the parties herein and the Administrator shall agree on a Program designed to implement and facilitate a preference in favor of non-whites in recruitment, admission, entry, and training, in Local 28 and the Apprentices Program, and to achieve by July 1, 1981, a 29% goal of non-whites in Local 28 and the Apprentices Program. The Program shall include, but not be limited to, the following provisions:

(a) Local 28 shall administer at least once a year, or more often if the Administrator shall order, a non-discriminatory hands-on journeyman's test, professionally developed and designed to test the ability of the applicant to perform duties normally required of an average sheet journeyman on a daily basis. Except as provided for in paragraph 21(b) infra, such tests shall be professionally developed and validated in accordance with EEOC Guidelines. Within a reasonable time before the administration of each test (which shall not be less than four weeks unless good cause is shown), Local 28 shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof. No such test shall be administered without the prior written approval of the Administrator, and the Administrator shall supervise all phases of the administration of all such tests, including the grading and notification to applicants of the results thereof. In addition, the Program shall include provisions describing the application forms and procedures to be used, and within the guidelines set forth in paragraph 21(f) infra, establishing



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eligibility requirements, and such other provisions as are necessary and proper to insure that the hands-on journeyman's tests are administered in a non-discriminatory manner and in furtherance of the 29% goal of non-whites in Local 28 and the Apprentice Program.

(b) The first such test described in paragraph 21(a) supra shall be administered in or before <sup>October 11,</sup> September 1975 and Local 28 shall immediately initiate and implement, under the supervision and direction of the Administrator, an advertising and publicity campaign designed to inform the non-white community within the City of New York and adjacent areas that the test is to be administered and that it will be conducted and graded in a non-discriminatory manner. Local 28 shall not be required to engage media whose principal place of business <sup>is</sup> located outside the five boroughs of New York. The test to be administered pursuant to this provision shall consist of a practical examination substantially similar to the practical examination which was part of the journeyman's test administered by Local 28 on November 8, 1969, as reviewed and modified by a sheet metal expert chosen by counsel for the plaintiffs and the State and the Administrator.

(c) JAC shall administer at least once a year, or more often if the Administrator shall order, a non-discriminatory apprentice entrance test consisting solely of (i) the mechanical comprehension aptitude test previously given by JAC in April, 1969, or such variations thereof which have been professionally developed and validated in accordance with EEOC Guidelines and (ii) a "read and follow directions" test to be developed professionally and validated in accordance with EEOC Guidelines. In addition, the Program as devised by the parties and the Administrator may include,

upon good cause shown, a professionally developed, validated and non-discriminatory basic arithmetic test which shall become part of the apprentice entrance test. Within a reasonable time before the administration of each such test (which shall not be less than four weeks unless good cause is shown), JAC shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating the validity of each component of the apprentice entrance test to be administered and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof. No such test shall be administered without the prior written approval of the Administrator, and the Administrator shall supervise all phases of the administration, including the grading and notification to applicants of the results, of all such tests. In addition, the Program shall include provisions describing the application forms and procedures to be used and within the guidelines set forth in paragraph 21(f) infra, establishing eligibility requirements, and such other provisions as are necessary and proper to insure that the apprentice entrance tests are administered in a non-discriminatory manner and in furtherance of the 29% goal of non-whites in Local 28 and the Apprentice Program.

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The first such test shall be administered in or before December 1975 and JAC shall initiate and implement commencing on or before October 1, 1975 an advertising and publicity campaign designed to inform the non-white community within the City of New York and adjacent areas that the test is to be administered and that it will be conducted and



graded in a non-discriminatory manner, JAC shall not be required to engage media whose principal place of business is located outside the five boroughs of New York.

→(d) Within a reasonable time, but not later than November 1, 1975, Local 28 shall replace one of the white JAC Trustees designated by it with a non-white. A non-white shall hold that position and continue to serve as a union-designated Trustee of JAC until at least July 1, 1981.

(e) In addition to any other lists or records required to be maintained by Local 28 or JAC by the terms of this Order or the Program or by order of the Administrator, either Local 28 and JAC, as the case may be, shall maintain separate records and lists for whites and non-whites concerning the following matters:

(i) Whites and non-whites who request an application for or apply to take the apprentice entrance test described in paragraph 21(c) supra;

(ii) Whites and non-whites who request an application for or apply to take the hands-on journeyman's test described in paragraph 21(a) and 21(b) supra;

(iii) Whites and non-whites who take the apprentice entrance test described in paragraph 21(c) supra;

(iv) Whites and non-whites who take the hands-on journeyman's test described in paragraphs 21(a) and 21(b) supra;

(v) Whites and non-whites who pass the apprentice entrance test described in paragraph 21(c) supra;

(vi) Whites and non-whites who pass the hands-on journeyman's test described in paragraphs 21(a) and 21(b) supra;

(vii) Whites and non-whites who seek or apply to transfer into Local 28 from an affiliated sister local union;

(viii) Whites and non-whites who inquire about the possibility of transferring into Local 28 from an affiliated sister local union;

(ix) Whites and non-whites who inquire as to the availability of work opportunities with or through Local 28, including but not limited to inquiring about or seeking "permits" or "identification slips";

(x) Whites and non-whites to whom "permits" or "identification slips" are issued or work opportunities with or through Local 28 are otherwise made available.

(xi) Whites and non-whites who contact Local 28 or JAC seeking sheet metal work;

(xii) Whites and non-whites who are employed as sheet metal workers by Local 28 contractors.

The records and lists specified in subsections (i) through (xii) of this paragraph shall contain the name, address, race, color or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the application, test, inquiry, contact, or employment (and the name of the contractor, where applicable), and the disposition, with reasons, of each such application, test, inquiry, contact or employment. Copies of these records and lists shall be submitted to counsel for the parties herein and the Administrator at least once every three months.



(f) An individual who is a lawful permanent resident alien shall not be denied access to Local 28 or the Apprentice Program, or work opportunities within the jurisdiction of Local 28 because of such individual's alien status.

(g) Local 28 and JAC shall provide non-white journeymen and apprentices of Local 28 with the same assistance, including the assistance of Local 28's officers and business agents, in obtaining employment as that provided to white members and apprentices of Local 28. Within thirty days after adoption of a Program, Local 28 and JAC shall file with the Administrator and submit to the parties a written statement describing the operation of their work referral and employment activities on behalf of the members and apprentices of Local 28. Nothing contained herein shall in any way limit the power of the Administrator to require Local 28 and/or JAC to modify, amend or change their work referral and employment activities, or institute or undertake additional procedures or activities regarding work referral or employment in order to (i) assist non-white journeymen and apprentices of Local 28 in obtaining employment or (ii) protect non-white journeymen and apprentices of Local 28 from bearing a disproportionate burden of unemployment.

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(h) In order to dispel Local 28's and JAC's reputations for discrimination in non-white communities, Local 28 and JAC shall implement, under the supervision of the Administrator, a program of advertising and publicity, through the use, inter alia, of non-white media including newspapers and radio stations directed primarily toward non-white communities, designed to inform the non-white communities in New York City and adjacent areas of the non-discriminatory opportunities to join Local 28 and the Apprentice Program.

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Such a program shall include, but not be limited to, provisions to inform the non-white communities of the specific dates and qualifications for the hands-on journeyman's tests and the apprentice entrance tests, and generally of opportunities available on a non-discriminatory basis in Local 28 and the Apprentice Program. Local 28 and JAC shall not be required to engage media whose principal place of business is located outside the five boroughs of New York.

(i) At least once a year until July 1, 1981, on a date to be set forth in the Program, Local 28 and JAC shall submit to the Administrator and the parties herein, a list of all members and apprentices of Local 28, with race identification, broken down into the following categories:

- (i) Active members;
- (ii) Pensioners; *(as defined in Program) NHF*
- (iii) Apprentices.

(j) Except as modified, changed or amended by the terms of this Order, the Program or order of the Administrator, Local 28 and JAC shall not change, modify or amend any aspect of the operation or content of the Apprentice Program, or the conditions or terms upon which an individual shall become a member of the Apprentice Program or Local 28 or entitled to work within the jurisdiction of Local 28.

22. In order to further the goal of achieving non-white membership of 29% in Local 28 and the Apprentice Program by July 1, 1981 and to restore non-whites to the positions that would have been available to them absent the pattern and practice of discrimination by Local 28 and the JAC, and further, considering all relevant circumstances, the Program may include, or the Administrator may, upon notice to the parties and the Court, adopt and implement as part of the Program, the following provisions requiring Local 28 and/or JAC to take the following actions:



(a) Require Local 28 to send written notice to the members and apprentices of the Blowpipe Division, Local 400 stating that pursuant to Section 9(k) of Article 16 of the Sheet Metal Workers International Association Constitution and Ritual, such members and apprentices are entitled to transfer into Local 28 after five years in good standing with the Blowpipe Division of Local 400.

(b) Under terms and conditions to be established in the Program or by the Administrator, require Local 23 to admit as full journeyman members all non-whites who apply in writing and have four years experience as a sheet metal worker in the United States, or elsewhere, in construction or industrial sheet metal work as an employee of a union or non-union employer, or have been employed in other sheet metal work, including but not limited to: employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association; sheet metal experience in the Armed Forces; or, vocational training related to the skills of a journeyman sheet metal worker.

(c) Under terms and conditions to be established in the Program or by the Administrator, require Local 28 and JAC to establish a program for the admission of non-whites with sheet metal experience into the Apprentice Program with advanced standing. A non-white admitted to the Apprentice Program with advanced standing shall be entitled to the same pay, instruction, supervision, training, employment and all other rights and privileges of any other individual in the Apprentice Program at the same level of training, and upon graduation from the Apprentice Program shall become a journeyman member of Local 28 with the same rights and privileges thereunder as any other journeyman member of Local 28.

(d) Under terms and conditions to be established

published in the Program or by the Administrator, require and direct that non-whites admitted to journeyman status in Local 28 through the procedures set forth in paragraphs 21(a) 21(b), 22(b) and 22(c) supra, shall pay an initiation fee in an amount not to exceed the amount of the lowest initiation fee charged to any white individual who was admitted to membership at the time the non-white would have been eligible for membership in Local 28 absent Local 28's and/or JAC's discrimination, including discriminatory admission requirements, against non-whites. In addition, the Administrator may direct that payment by non-whites of the aforesaid initiation fees shall commence with their employment with a Local 28 contractor and shall be paid in such monthly installments as determined by the Administrator. Neither the amount of the initiation fee to be paid by non-whites under this paragraph, nor the installment payment authorized hereunder, shall in any way affect the journeyman status, including but not limited to the right to secure employment with a Local 28 contractor, of the non-whites to whom this provision applies.

(e) Require and direct that persons who become qualified for journeyman membership pursuant to paragraphs 21(a) and 21(b) supra may, at their discretion, defer their admission into Local 28 for a reasonable period of time.

(f) Local 28 shall issue "permits" or "identification slips" only with the express written consent of the Administrator, and only on such terms and conditions as the Administrator, in his discretion, shall require, including but not limited to requiring Local 28 to first solicit the members and/or apprentices of the Blowpipe Division, Local 400 to work within the jurisdiction of Local 28 on "identification slips" or "permits" before contacting any other individual including members and/or apprentices of



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other affiliated sister local unions or allied building trade local unions in order to solicit such individuals to work on "permits" or "identification slips".

BACK PAY

23. Non-whites who file a written claim with the Administrator on or before January 15, 1976, and who comply with the following conditions shall be entitled to awards of back pay from Local 28:

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(a) There is a record, ~~including testimonial evidence from the trial of this action~~, of application for direct entry into Local 28, either through a journeyman's test previously administered by Local 28 or through transfer;

(b) Each such non-white for whom there is a record as described in paragraph 23(a) supra demonstrates before the Administrator, in light of this Court's conclusions in its Opinion dated July 18, 1975, that he or she was discriminatorily excluded from membership in Local 28; and

(c) Each such non-white demonstrates monetary damages suffered as a result thereof.

24. All non-whites who qualify for awards of back-pay as described in paragraph 23, shall be entitled to recover proven damages from the date the discrimination occurred through (a) July 18, 1975, the date of filing of this Court's Opinion in this action, or (b) the date of the individual's admission to Local 28, whichever is earlier.

25. Back-pay damages shall be computed on the basis of the average monthly wage earned by members of Local 28 in each of the affected calendar years and shall be adjusted to reflect other employment income or public assistance received by claimants. Payment of damages, as computed above, shall be made after determination by the Administrator of all claims and their discretionary review, if necessary, by this Court.

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GENERAL PROVISIONS

26. All records and lists required by this Order and the Program shall be maintained for <sup>ten</sup>~~twenty~~ years, and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at other mutually convenient times without further Order of this Court.

27. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure the full and effective implementation of the terms and intent of this Order and the Program.

28. This Court shall retain jurisdiction over this action to ensure compliance with the terms of this Order and the Program and to enter such additional orders as may be necessary to effectuate equal employment opportunities for non-whites and other appropriate relief.

Dated: New York, New York

August 28, 1975.

K. H. F. W.  
U. S. D. J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, and THE CITY OF  
NEW YORK,

Plaintiffs,

- against -

LOCAL 638 . . .  
LOCAL 28 OF THE SHEET METAL  
WORKERS' INTERNATIONAL ASSOCIATION,  
LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE . . . SHEET METAL AND  
AIR-CONDITIONING CONTRACTORS'  
ASSOCIATION OF NEW YORK CITY, INC.,  
etc.,

Defendants.

71 Civ. 2877 (HFW)  
CONSENT ORDER

It is hereby ordered that paragraph 21 (b) of the Order  
and Judgment entered herein on August 28, 1975 is hereby modified to  
change "September" to "October 11".

Dated: New York, New York

September 13, 1975

1st Henry F. Werler  
U. S. D. J.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, and THE CITY OF  
NEW YORK,

Plaintiffs, ..

-against-

71 Civ. 2877 (HFW)

LOCAL 638 . . .  
LOCAL 28 OF THE SHEET METAL  
WORKERS' INTERNATIONAL ASSOCIA-  
TION, LOCAL 28 JOINT APPRENTICE-  
SHIP COMMITTEE . . . SHEET METAL  
AND AIR-CONDITIONING CONTRACTORS'  
ASSOCIATION OF NEW YORK CITY,  
INC., etc.,

NOTICE OF APPEAL

Defendants.

-----x  
LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Third-Party Defendant.

-----x  
LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Fourth-Party Defendant.

-----x  
NOTICE is hereby given that Sheet Metal Workers'  
International Association, Local Union No. 28, and the



Local 28 Joint Apprenticeship Committee by the Union Trustees thereof, two of the defendants above named, hereby appeal to the United States Court of Appeals from the Decision ("Opinion") and Order (one paper) entered in this action on the 18th day of July, 1975, in favor of the plaintiffs against defendants.

Dated: New York, New York  
August 28, 1975



SOL BOGEN  
One Penn Plaza  
New York, New York 10001  
Attorney for Defendants  
Sheet Metal Workers' International  
Association, Local Union No. 28  
and the Union Trustees of the  
Local 28 Joint Apprenticeship  
Committee

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, and THE CITY OF  
NEW YORK,

Plaintiffs,

-against-

LOCAL 638 . . .  
LOCAL 28 OF THE SHEET METAL  
WORKERS' INTERNATIONAL ASSOCIA-  
TION, LOCAL 28 JOINT APPRENTICE-  
SHIP COMMITTEE . . . SHEET METAL  
AND AIR-CONDITIONING CONTRACTORS'  
ASSOCIATION OF NEW YORK CITY,  
INC., etc.,

Defendants.  
-----x

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Third-Party Defendant.  
-----x

LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Fourth-Party Defendant.  
-----x

Original filed  
9/12/75 L

District Court Index No.  
71 Civ. 2877 (HFW)

Court of Appeals Docket No.  
75-6079

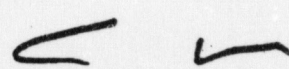
AMENDED NOTICE OF APPEAL

NOTICE is hereby given that Sheet Metal Workers'  
International Association, Local Union No. 28, and the Local 28



Joint Apprenticeship Committee by the Union Trustees thereof, two of the defendants above named, hereby appeal to the United States Court of Appeals from the Decision and Order (one paper) entered in this action on the 18th day of July, 1975 and from the Judgment entered on the 29th day of August, 1975, both in favor of the plaintiffs against defendants.

Dated: New York, New York  
September 10, 1975

  
\_\_\_\_\_  
SOL BOGEN

One Penn Plaza  
New York, New York 10001  
Attorney for Defendants  
Sheet Metal Workers' International  
Association, Local Union No. 28  
and the Union Trustees of the  
Local 28 Joint Apprenticeship Committee

NOTICE OF CROSS-APPEAL  
BY E.E.O.C.  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

(Copy may be submitted at  
a later date.)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Original filed  
9/12/75 J

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, and THE CITY OF  
NEW YORK,

NOTICE OF APPEAL

71 Civ 2877 (HFW)

City of  
NY

Plaintiffs,

-against-

LOCAL 638  
LOCAL 28 OF THE SHEET METAL  
WORKERS' INTERNATIONAL ASSOCIA-  
TION, LOCAL 23 JOINT APPRENTICE-  
SHIP COMMITTEE . . . SHEET METAL  
AND AIR-CONDITIONING CONTRACTORS'  
ASSOCIATION OF NEW YORK CITY,  
INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Fourth-Party Defendant.

S I R S:

NOTICE is hereby given that plaintiff, The City of New York, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the opinion and order dated July 18, 1975, and from so much of the order and judgment entered herein on August 29, 1975 which refuses to abolish the use of arrest records for apprenticeship admission and which establishes unduly stringent conditions for back pay claims.

Dated: New York, N. Y.  
September 12, 1975

W. BERNARD RICHLAND  
Corporation Counsel of  
The City of New York  
Attorney for the City  
of New York  
Office & P. O. Address:  
Municipal Building  
New York, New York 10007

TO:

By

Carl Sanders

PAUL J. CURRAN  
United States Attorney  
Attorney for Equal Employment  
Opportunity Commission  
One St. Andrews Plaza  
New York, New York 10007  
Attention: Taggart D. Adams, Esq.

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